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Supreme Court, U.S.
FILED

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Case No. ~~OFFICE OF THE CLERK~~

In the
Supreme Court of the United States

AGRIS PAVLOVSKIS,

Petitioner,

v.

THE CITY OF EAST LANSING,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

AMENDED
PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER EAST LANSING ZONING ORDINANCE SECTIONS 50-772 THROUGH 50-776 AND EAST LANSING ZONING ORDINANCE 1097, WHICH TOGETHER PROHIBIT OWNERS OF SINGLE FAMILY HOMES IN A SINGLE FAMILY ZONING DISTRICT FROM LEASING THOSE HOMES FOR SINGLE FAMILY RESIDENTIAL USE, VIOLATES THE MICHIGAN AND UNITED STATES CONSTITUTIONS.

PARTIES TO THE PROCEEDINGS

The Petitioner is Agris Pavlovskis an individual citizen of the United States and a property owner who resides in the City of East Lansing, Michigan. Mr. Pavlovskis is the Plaintiff and Appellant in the Trial Court and Appellate Courts.

The Respondents are the City of East Lansing and the East Lansing City Clerk. The Respondents are the Defendants and Appellees in the Trial Court and Appellate Courts.

The following Amicus Curiae filed briefs in support of Mr. Pavlovskis' position:

Real Property Law Section of the Michigan State Bar, Michigan Association of Home Builders, Building Industry Association of Southeast Michigan, Rental Property Owners of Michigan, Rental Property Owners Association of Kent County, Kalamazoo Area Rental Housing Association, Real Estate Investors Association of Oakland, Fair Housing Center for Metropolitan Detroit, Fair Housing Center of Southwest Michigan, Fair Housing Center of West Michigan and Fair Housing Center of Southwestern Michigan.

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The Petitioner's Application for Leave to Appeal, File No.: 135742, was denied by Order of the Michigan Supreme Court, June 25, 2008. Petitioner's Motion for Reconsideration was denied by Order of the Michigan Supreme Court, September 22, 2008.

The Petitioner's Appeal to the Michigan Court of Appeals, File No.: 275236, was reviewed on the merits and an unpublished opinion was issued on December 20, 2007, denying the requested relief.

The Ingham County Circuit Court denied Petitioner's Motion for Summary Disposition and granted Respondents' Cross-Motion for Summary Disposition by Opinion and Order issued December 6, 2006, File No.: 05-523-DZ.

JURISDICTION

This Petition for Writ of Certiorari results from an Order issued and filed by the Michigan Supreme Court, September 22, 2008, denying Petitioner's Motion for Reconsideration to grant Petitioner's Application for Leave to Appeal.

This Honorable Court has jurisdiction over the instant case pursuant to Article III, Section 2, of the Constitution of the United States, Rules of the

United States Supreme Court, Rule 10(b) and (c) and 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES

AND ORDINANCES INVOLVED

CONSTITUTION OF THE UNITED STATES

ARTICLE III

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;-to all Cases affecting Ambassadors, other public Ministers and consuls;-to all Cases of admiralty and maritime Jurisdiction;-to Controversies to which the United States shall be a Party;-to Controversies between two or more States;-between a State and Citizens of another State;-between citizens of different States;-between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. In all Cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction

both as to Law, and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

FIFTH AMENDMENT

No person shall be held to answer for a capital, otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any

person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE

TITLE 28-JUDICIARY AND JUDICIAL

PROCEDURE

PART IV-JURISDICTION AND VENUE

CHAPTER 81-SUPREME COURT

Section 1254. Court of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

CONSTITUTION OF THE STATE OF MICHIGAN

Section 17. Self-incrimination; due process of law; fair treatment at investigations.

Sec. 17. No person shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and

executive investigations and hearings shall not be infringed.

MICHIGAN COMPILED LAW

MICHIGAN ZONING ENABLING ACT

ACT 110 OF 2006

ARTICLE TWO

125.3201.new Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations. (Appendix, Pg. 60-64)

CITY OF EAST LANSING CODE SECTIONS

AND ORDINANCES

ORDINANCE 900

An Ordinance to Amend Chapter 55, Zoning of Title V, Zoning and Planning, of the code of the City of East Lansing by Amending Sec. 5.21, 5.32 and 5.36. (Appendix, Pg. 89-93)

SUBSTITUTE ORDINANCE 1035C

Article VII. Other Districts – of Chapter 50-Zoning, Sections 50-772 through 50-776. (Appendix, Pg. 65-73)

ORDINANCE 1097

An Ordinance to Amend the Zoning Use District Map of Chapter 50-Zoning of the Code of the City of East Lansing. (Appendix, Pg. 74-86)

CHAPTER 50, ART. IV, DIV. 4

Medium Density Single-Family Residential District,
R-2, Sec.50-262, Permitted uses. (Appendix, Pg. 87-
88)

STATEMENT OF CASE

At issue in this suit is the constitutionality of zoning ordinances of the City of East Lansing, which prohibit owners of single family homes located in single family zoning districts to grant leasehold estates for single family residential use.

The Petitioner has been a resident of the City of East Lansing since 1988. Petitioner owns his home in fee simple and there is no mortgage. Petitioner has plans to build his retirement home in Canyon Beach, Oregon where he also owns private property. When Petitioner purchased his property it was zoned R-2, Medium Density Single-family Residential, which permits the principle use of the single-family dwelling, along with the rental of said dwelling. (East Lansing City Code, (ELCC), Chapter 50, Art. IV, Div. 4, Section 50-626, Appendix, Pg. 87-88). In 2005, East Lansing adopted Ordinance 1097 which created the Bailey Strathmore, R-O-1, Residential Rental Restriction Overlay District. (East Lansing Zoning Ordinance (ELZO) 1097,

Appendix, Pg.74-86). The district is a zoning classification which prohibits and restricts the rental uses of single-family dwellings within a neighborhood. Petitioner's property is located within the district at 829 Ann Street, Tax Parcel Number 33-20-02-18-148-006. (ELZO 1097, Appendix, Pg. 75).

Substitute Ordinance No. 1035C was introduced to the City Council, December 16, 2003, a public hearing was held on February 3, 2004, the Ordinance was adopted, April 7, 2004, and became effective April 15, 2004. (ELZO 1035C, Appendix, Pg. 65-73). The Ordinance includes the procedures to create zoning classifications. The Ordinance permits owners within R-1, R-2 and RM-8 residential zoning districts to circulate petitions, and present them to the Clerk's Office for verification. The proposed Ordinance is then forwarded to City Council to establish an overlay district and use regulations in residential neighborhoods. (ELZO 1035C, Section 50-775, Appendix, Pg. 67-71). The R-O-1 zoning classifications, if adopted by City Council, prohibit residents within the district from applying for rental licenses or granting leasehold estates. (ELZO 1035C, Sec. 50-774, Appendix Pg. 66-67). Substitute

Ordinance 1035C, Sec.50-774(1), defines an R-O-1 residential rental restriction overlay district as follows:

In the R-O-1 Residential Rental Restriction overlay district, permitted uses are all uses in the underlying zoning district except the use or occupancy of a one-family dwelling unit so as to require a rental housing license pursuant to Article 10 Chapter 101 of the Code of the City of East Lansing. (Appendix Pg. 67).

In the instant case, on October 19, 2004, residents of the Bailey Strathmore neighborhood submitted petitions to the City Clerk for the adoption of Ordinance 1097. Ordinance 1097 was adopted and became effective March 20, 2005. Once the Ordinance becomes effective the Petitioner cannot appeal to the Zoning Board of Appeals or apply for a variance. The adoption of an overlay district does not change the underlying R-2 residential zoning district.

In the instant case the Petitioner did not sign a petition for Ordinance 1097. Petitioner was given notice of a public hearing before the Planning Commission regarding the proposal of Ordinance 1097 which was seeking to create an R-O-1, Residential Rental Restriction Overlay District that

affected his private property. Petitioner attended the public hearings both before the Planning Commission and the City Council. At the Planning Commission and at the City Council, Petitioner requested that his property be excluded from the overlay district pursuant to East Lansing Zoning Ordinance 1035C, Section 50-775,(2)(e). (ELZO 1035C, Appendix, Pg. 70-71). At the Planning Commission Meeting a Motion to exclude several properties from Ordinance 1097, including the Petitioner's property was introduced; the motion to exclude the properties failed by a vote of 3 to 4.

Petitioner filed a Request in the Circuit Court for Declaratory Relief requesting that Ordinance 1035C and 1097 be deemed invalid. Petitioner moved the trial court to amend the Request for Declaratory Relief to include the substantive due process issues implicating the federal questions involved. Petitioner's motion was granted. (Transcript of Motion to Amend, Appendix, Pg. 55-59). Petitioner then filed the First Amended Request for Declaratory Relief and raised the federal question in Count I and II before the trial court. (First Amended Request For Declaratory Relief, Appendix, Pg. 35 & 41). Petitioner then filed a motion for summary

disposition. The Petitioner raised five issues in his motion regarding Ordinance 1035C and 1097. The constitutionality of Ordinance 1035C and Ordinance 1097 is the only issue raised by the Petitioner that is relevant to this Petition.

Respondents filed a cross motion for summary disposition. After oral argument, the trial court granted Respondents' cross-motion for summary disposition and issued an Opinion and Order on December 6, 2006. (Opinion and Order, Appendix, pg. 17-25).

The trial court failed to rule on any of Petitioner's substantive due process claims. The Michigan Court of Appeals reviews de novo constitutional issues and addressed those issues in the December 20, 2007, unpublished opinion. (Unpublished Opinion, Appendix, Pg. 4-16).

Petitioner argued that Ordinance 1035C and Ordinance 1097 do not advance a reasonable government interest as required by the Constitution's due process clause. The Court of Appeals reasoned that "[z]oning to preserve the residential character of a neighborhood by limiting the number of transient college students who can live in single-family dwelling housing has been recognized as a legitimate

and reasonable governmental interest.” (Unpublished Opinion, Appendix Pg. 11). The Court held that Ordinance 1035C survives Petitioner’s substantive due process challenge.

Petitioner also argued that Ordinance 1035C is unreasonable because there are many Ordinances already in place that further the governmental interest of preserving neighborhoods such as, traffic laws, and property maintenance codes, for example. The Court reasoned that Ordinance 1035C is an attempt by the City of East Lansing to avoid the use of the coercive power of the state to enforce violations. The court of appeals held that Ordinance 1035C is not superfluous and therefore reasonable.

Petitioner further argued that Ordinance 1097 is arbitrary and capricious because it is not based on a plan and instead is based on the arbitrary and capricious whim of residents who sign petitions. The Court held that Ordinance 1097 was based on the East Lansing comprehensive plan and therefore neither arbitrary nor capricious. The East Lansing comprehensive plan was adopted October 25, 2007, more than two years after the adoption of Ordinance 1097, which affects the Petitioner’s property, and more than three years after the adoption of

Substitute Ordinance 1035C. (Resolution to Adopt Comprehensive Plan, Appendix, Pg. 94-97).

Lastly, Petitioner argued that Ordinance 1097 is invalid spot zoning. The Court held that Ordinance 1097 is not spot zoning.

Petitioner then filled an Application for Leave to Appeal with the Supreme Court of Michigan alleging error by the Michigan Court of Appeals. Petitioner's Application for Leave to Appeal was denied. Petitioner then filled a Motion for Reconsideration the Motion was denied giving rise to this Petition for Writ of Certiorari.

ARGUMENT

INTRODUCTION

The right of a landowner to lease his land is a property right within the protection of the constitution. In the instant case the Michigan Supreme Court denied Petitioner's Application for Leave to Appeal and therefore has decided an important question of federal law that has not been, but should be decided by this Court. It has never been decided by this Court that it is reasonable when a municipality through zoning laws eliminate an entire estate in property. The City of East Lansing has infringed on the Petitioner's fundamental right to

grant a leasehold estate in his privately held property.

I

The Michigan Zoning Enabling Act permits municipalities to regulate "uses" not "users" and therefore the Ordinances are an ultra vires act on the part of the municipality because it regulates users within a single family district.

Michigan municipalities have no inherent power to enact zoning laws. The Michigan Zoning Enabling Act permits municipalities to enact zoning laws to regulate uses, not users. The East Lansing Zoning Ordinances regulate users within a single family district and are therefore ultra vires.

The general purpose of zoning is the regulation of land and not landowners. FGL & L Prop Corp v. City of Rye, 66 NY2d 111 (1985). Zoning regulates use and not the ownership, status or identity of the person who occupies the land.

Michigan law is clear on this point. The Michigan Supreme Court has said, "The entire statutory scheme of the zoning enabling act . . . is concerned with regulating uses of land and structures, not ownership. Deardon, Archbishop of the Roman Catholic Archdiocese of Detroit v Detroit, 403 Mich 257, 267; 269 NW2d 139 (1978).

Michigan's view is in accord with the generally accepted view that:

Zoning restrictions or conditions that limit the use of land based on the identity or status of the owner or occupant of the land generally are held invalid by the courts. Zoning regulation that limits the use of land based on race, economic status, age, blood relationship, or identity of the user or owner may be held invalid on either due process or equal protection grounds as an arbitrary restriction unrelated to any public purpose.

Restrictions based on the identity of the owner or occupant also may be held ultra vires as beyond the scope of authority delegated by a zoning enabling act. On this ultra vires issue, state courts have held that a zoning enabling act authorizes a municipality to regulate the use of land but not the status of the land users or owners. A controlling rationale in such case is that while zoning authorizes regulation of the use of land, it may not be exercised as an ad hominem privilege to control the landowner or occupant.

5 Zielgler, Rathkopf's The Law of Zoning and Planning, (4th Ed) sec. 81:04 (2001-2008).

Municipalities have no inherent ability to enact zoning laws and have no inherent constitutional authority to exercise the police power to zone. Clements v McCabe, 210 Mich 207; 177 NW 722 (1920); Krajenke Buick Sales v. Hamtramck City

Engineer, 322 Mich 250; 33 NW2d 781 (1948). A municipality's zoning power is derived from and is limited to the reach of the Zoning Enabling Act. Michigan Zoning Enabling Act (MZEA), MCL section 125.3101 et seq. (MZEA, Appendix, Pg. 60). An ordinance prohibiting all rentals within a zoning district is a regulation of who may use property and the user and therefore is not within the scope of East Lansing's zoning power as defined in MCL sec. 125.3201 and MCL sec. 125.3203. (MZEA, Appendix 60-64). Enacting the Ordinances was therefore an ultra vires act by the municipality.

The renting of property is not a use but is rather a type of estate conveyed and held in property. Since zoning only permits the regulation of uses, not regulation of estate holdings, the type of estate held by an occupying resident is irrelevant. While occupancy restrictions are a recognized restriction on the use of property, restrictions on the type of property interest held by a tenant have never been recognized as a legitimate use of the police power by any court.

The Ordinances at issue in this case arbitrarily prohibit leasehold estates within selected single family zoning districts, are a clear violation of the

MZEA and the long standing rule that zoning regulates use, not users of property.

II

East Lansing Zoning Ordinance Sections 50-772 through 50-776 and Ordinance 1097 Are Not Rationally Related to a Legitimate Government Interest.

The City of East Lansing limits to two the number of unrelated individuals who may occupy a single family dwelling. (ELCC, Chapter 50, Art. IV, Div. 4, Section 50-262(3)(d), Appendix, Pg. 88). However, the instant controversy involves much more than limiting the number of individuals who may occupy a home in a single family zone. The instant controversy involves a total restriction of renters, including families, from occupying a home in a single family zone. "Zoning measures must find their justification in the police power exerted in the interest of the public." State of Washington v. Roberge, 278 US 116 at 120-121; 49 S Ct 50; 73 L Ed 210 (1928). A zoning ordinance will withstand a substantive due process challenge if it is reasonably related to a legitimate government interest. It has been held that "[a] quiet place where yards are wide, people few, and motor vehicles restricted are

legitimate guidelines in a land-use project addressed to family needs." Village of Belle Terre v. Boraas, 416 US 1, 9; 94 S Ct 1536, 1541. However, the Ordinances at issue here are not reasonable or rationally related to this, or any other legitimate governmental interest.

The Michigan Court of Appeals in its December 20, 2007 unpublished opinion reasoned that "[z]oning to preserve the residential character of a neighborhood by limiting the number of transient college students who can live in single-family dwelling housing has been recognized as a legitimate government interest." (Unpublished Opinion, Appendix Pg. 11). Ordinance 1035C, Sec. 50-773, states the purpose of the ordinance as follows:

These districts establish three levels of restrictions which operate to preserve the attractiveness, desirability, and privacy of residential neighborhoods by precluding all or certain types of rental properties and thereby precludes the deleterious effects rental properties can have on a neighborhood with regard to property deterioration, increased density, congestion, noise and traffic levels and the reduction of property values. (Ordinance 1035C, Appendix, Pg. 65-66)

The Ordinance fails to mention limiting the number of transient college student as its purpose or

goal. The goal or purpose of the ordinances may be legitimate. It is the means used to achieve the goal or purpose that violate both the United States and Michigan Constitutions due process clauses.

Legislators may not, under the guise of the police power impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities. *Lawton v Steele* 152 US 133, 137, 14 S Ct 499, 38 L Ed 385; *Adams v Tanner*, 244 US 590, 594, 37 S Ct 662, 61 L Ed 1336, LRA 1917F, 1163, Ann Cas 1917D, 973; *Meyer v. Nebraska*, 262 US 390, 399, 400, 43 S Ct 625, 67 L Ed 1042, 29 ALR 1446; *Burns Baking Co. v. Bryan*, 264 US 504, 513, 44 S Ct 412, 68 L Ed 813, 32 ALR 661; *Norfolk Ry. V. Public Service Commission*, 265 US 70, 74, 44 S Ct 439, 68 L Ed 904; *Pierce v. Society of Sisters*, 268 US 510, 534, 535, 45 S Ct 571, 69 L Ed 1070, 39 ALR 468; *Weaver v. Palmer Bros. Co.*, 270 US 402, 412, 415, 46 S Ct 320, 70 L Ed 654; *Tyson & Brother v. Banton*, 273 US 418, 442, 47 S Ct 426, 71 L Ed 718. *Washington v Roberge*, *supra*, page 121 of 278 US (49 S Ct 52).

Even if there is a legitimate government interest in limiting the number of transient college students who may live in a single-family home in certain areas, the Ordinances go far beyond that; they are overbroad on their face because they not only affect the intended group of "transient college students,"

but also prohibit leasehold estates for professors, families and all other non-student persons who desire to rent a dwelling or residence within the respective district. These zones create an owner occupied enclave and are unconstitutional.

In addition, the ordinances also prohibit the Petitioner from pursuing the useful activity of renting his property. In Gangemi v. Zoning Board of Appeals of the Town of Fairfield, 255 Conn 143; 763 A2d 1011 (2001), the Supreme Court of Connecticut stated, "it is undisputable that the right of property owners to rent their real estate is one of the bundle of rights that, taken together, constitute the essence of ownership of property." *Supra* at 151. In Gangemi the Connecticut Supreme Court held that the continued maintenance of a no rental condition on the Plaintiff's property served no useful or legal purpose. The Court did not reach the constitutional issue and instead decided the matter on the deeply rooted public policy which favors the free and unrestricted alienability of property.

In its analysis the Court identified three economic benefits that are attached to a landowner's property, included in their "bundle of rights" and protected by the Constitution. The Court said,

"[o]wners of a single-family residence can do one of three economically productive things: (1) live in it; (2) rent it; (3) sell it. . . .Stripping the plaintiffs of essentially one-third of their bundle of economically productive rights constituting ownership is a very significant restriction on the right the ownership."
Gangemi at 151-152

The ordinances at issue in this case cause a significant restriction on the Petitioner's protected rights to own private property. Like the Plaintiffs in Gangemi the Petitioner has been stripped of his right to rent his private property. In the current economic climate the fair market value of Petitioner's property has been significantly reduced as opposed to its actual value. It is economically advantageous for the Petitioner to weather the economic storm and derive economic benefit from his private property by granting a leasehold estate as opposed to selling it. The Petitioner here does not want to occupy the property upon the completion of his retirement home in Canyon Beach, Oregon. Even though Petitioner would be required to either occupy his property or sell it. In the event the Petitioner is unable to sell his property he ultimately becomes a servant to his own private property.

The Ordinances at issue in this case clearly infringe on a property right protected by the United States and Michigan Constitutions due process clauses. The Ordinances should not be allowed to stand.

III

On a Balancing of the Public Interest Against the Interests of the Property Owner, The Ordinances are Unreasonable and Constitute a Deprivation of Property Without Due Process of Law.

In testing the validity of a zoning ordinance under the substantive due process clauses, United States Constitution, Amendments V and XIV and Michigan Constitution of 1963, Article 1, Sec. 17, a balance of the interests of the property owner against the perceived public interest is required. The more remote the regulation is from the alleged problem, the less likely it is that the regulation will be upheld. Where the benefit to be gained by the public is small in relation to the burden imposed on the landowner, it will not be upheld. Norton Theatre, Inc. v. Gribbs, 373 F Supp 363, 370 (ED Mich 1974).

The Ordinances fall far short of meeting the substantial due process test. To deal with the perceived problem of the impact of student renters on

single family residential districts, East Lansing has wielded a blunt and broad ax – it has allowed the prohibition of all renters from living in single family homes in owners' only enclaves within single family districts and it has created such an owner enclave by adopting Ordinance 1097. Thus, the burden the Ordinances impose on the Petitioner, and the burden of similar ordinances could impose is large. The burden on the Petitioner is devastating – the ordinances have deprived Petitioner of the right to derive economic benefit from his property, and eliminated an entire estate in property.

Weighing this heavy burden on property owners and the sweeping over breadth of the ordinances against the perceived public benefit to be derived, Petitioner submits that the outcome should be clear. The Ordinances do not meet constitutional muster and they must be invalidated.

IV

East Lansing Zoning Ordinance 1097 is Arbitrary and Capricious when one set of owners determines the extent and kind of use which another set of owners may make of their private property.

In Roberge, this Court invalidated an ordinance that prohibited a Trustee from dedicating

land for the legitimate use of a philanthropic home for aged poor. The ordinance in that case provided that “[a] philanthropic home for children or for old people shall be permitted in first resident district when written consent shall have been obtained of the owners of two thirds of the property within 400 feet of the proposed building.” 118 at US 278.

In the instant case Ordinance 1035C is very similar to the aforementioned ordinance in that it provides that two thirds of property owners within a proposed overlay district must sign a petition to introduce the proposed ordinance to City Counsel. ELZO 1035C, Sec. 50-775(1)(c). (Appendix Pg. 68). In fact, one of the stated goals of the ordinance “is to allow owners of property within residential neighborhoods to control the types of rental properties, if any, that are permitted in one-family dwellings within their neighborhood.” ELZO 1035C, Sec. 50-773. (Appendix Pg. 65-66)

In Roberge the Court stated the issue as follows: “Is the delegation of power to owners of adjoining land to make inoperative the permission, given by section 3(c) as amended, repugnant to the due process clause?” 120 at US 278. This Court reasoned that the landowners surrounding the area

to be developed "are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily and may subject the Trustee to their will or caprice.

In this case the Petitioner is subjected to the will and caprice of the property owners who signed the petitions to introduce Ordinance 1097. The landowners who signed the petitions are not bound by an official duty and can sign the petitions for selfish reasons or arbitrarily. This delegation of power is repugnant to the due process clauses of the United States and the Michigan Constitutions.

In Roberge this Court held: "As the attempted delegation of power cannot be sustained, and the restriction thereby sought to be put on the permission is arbitrary and repugnant to the due process clause . . . 122-123 at US 278. Similarly, in this case Ordinance 1097 is repugnant to the due process clause and cannot withstand the constitutional challenge by the Petitioner.

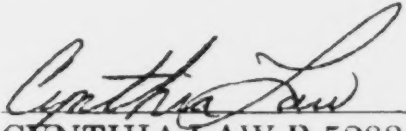
CONCLUSION

There exist compelling reasons to grant the Petition and issue a Writ of Certiorari in the instant case. Under the guise of regulating land use, Zoning

Ordinance Sections 50-772 through 50-776 and Ordinance 1097, do not regulate, they prohibit. Contrary to the decisions of this Court and other State Supreme Court decisions the State of Michigan has infringed on the Petitioner's substantive due process rights by eliminating an entire estate in property. The right to enter into a leasehold estate is a fundamental right protected by the Constitution. The ordinances at issue violate the due process clauses of the United States and Michigan Constitutions; they are overbroad and they are arbitrary and capricious. The ordinances cannot be allowed to stand. The Petitioner requires this Court to exercise its judicial discretion to protect a fundamental right guaranteed by the Constitution of the United States.

Respectfully submitted,

Dated: 3/2/09


CYNTHIA LAW P-52833
Attorney for Petitioner

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Supreme Court, U.S.
FILED

081114 DEC 22 2008

Case No. OFFICE OF THE CLERK

In the
Supreme Court of the United States

AGRIS PAVLOVSKIS,

Petitioner,

v.

THE CITY OF EAST LANSING,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

AMENDED APPENDIX

CYNTHIA LAW
Counsel for Petitioner
P.O. Box 12082
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Order

Michigan Supreme Court
Lansing, Michigan

September 22, 2008

Clifford W. Taylor,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver

Marilyn Kelly

Maura D. Corrigan

Robert P. Young, Jr.

Stephen J. Markman,
Justices

135742(51)

SC: 135742

COA: 275236

Ingham CC: 05-000523-NZ

AGRIS PAVLOVSKIS,
Plaintiff-Appellant,

V

CITY OF EAST LANSING, and
EAST LANSING CITY CLERK,
Defendants-Appellees.

_____/

On order of the Court, the motion for reconsideration of this Court's June 25, 2008 order is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 22, 2008

Corbin R. Davis

Order

Michigan Supreme Court
Lansing, Michigan

June 25, 2008

Clifford W. Taylor
Chief Justice

135742 & (43)(45)(46)(47)(48)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
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Robert P. Young, Jr.
Stephen J. Markman,
Justices

SC: 135742

COA: 275236

Ingham CC: 05-000523-NZ

AGRIS PAVLOVSKIS,
Plaintiff Appellant,

V

CITY OF EAST LANSING, and EAST LANSING
CITY CLERK,

Defendants-Appellees.

On order of the Court, the motions for leave to file briefs amicus curiae are GRANTED. The application for leave to appeal the December 20, 2007 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order

entered at the direction of the Court.

June 25, 2000

Calvin R. Davis

STATE OF MICHIGAN
COURT OF APPEALS

AGRIS PAVLOVSKIS,

UNPUBLISHED
December 20, 2007

Plaintiff-Appellant,

v

CITY OF EAST LANSING and EAST
LANSING
CITY CLERK,

Defendants-Appellees.

No. 275236
Ingham Circuit Court
LC No. 05-000523-NZ

Before: Donofrio, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants. This dispute involves the City and Village Zoning Act (CVZA), MCL 125.581 *et seq.*,¹ and provisions of the City of East Lansing Charter and Code of Ordinances. Because Ordinance 1035C vests

¹ The Michigan Zoning Enabling Act, MCL 125.3101 *et seq* replaced the CVZA which was repealed by 2006 PA 110. See MCL 125.3702.

ultimate authority with the municipal legislative body to enact proposed zoning amendments, plaintiffs argument that Ordinance 1097 is void fails, and, because Ordinance 1035C advances reasonable government interests and Ordinance 1097 is neither arbitrary nor capricious, nor invalid spot zoning, we affirm.

I

Plaintiff owns certain residential real property located in the Central Bailey-Strathmore Neighborhood (Bailey-Strathmore) of the City of East Lansing. It was originally zoned R-2, Medium Density Single-Family Residential, which permits the principal use of single-family dwellings, along with the rental of such dwellings. See East Lansing Zoning Ordinance, §§ 50-6, 50-262(1), (3); East Lansing Ordinance, §§ 6-175, ES-1000.1 *et seq.* In 2004, East Lansing adopted Substitute Ordinance 1035C, which amended the city's zoning ordinance to create three "Residential Rental Overlay Districts," designated R-O-1, R-O-2, and R-O-3. East Lansing Zoning Ordinance, § 50-772. These districts allow the residents of certain residential districts to preclude "all or certain types of rental properties" within the boundaries created by the overlay. East Lansing Zoning Ordinance, § 50-773. Ordinance 1035C includes a citizen-initiated mechanism for proposing the adoption of these overlay districts, though the ultimate adoption of the overlay is within the discretion of the East Lansing City Council. East Lansing Zoning Ordinance, § 50-775.

Following the adoption of Ordinance 1035C,

residents of Bailey-Strathmore circulated petitions for the adoption of an overlay district in that neighborhood. The petition was verified and a proposed ordinance, Ordinance 1097, was drafted in conformity therewith.

Following various proceedings, the city council ultimately adopted Ordinance 1097. East Lansing Zoning Ordinance, § 50-777(7). Plaintiff filed the instant action seeking a declaratory judgment that Ordinance 1035C and Ordinance 1097 are invalid. The court granted summary disposition to defendants and plaintiff now appeals as of right.

II

We review summary disposition rulings de novo. *McClements v Ford Motor Co*, 473 Mich 373, 380; 702 NW2d 166 (2005). A motion under MCR 2.116(C)(10) entitles the movant to summary disposition where no genuine issue of material fact remains. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). We consider the evidence submitted by the parties in the light most favorable to the non-moving party. *Nastal v Henderson & Assoc*, 471 Mich 712, 721; 691 NW2d 1 (2005).

III

Plaintiff first argues that Ordinance 1097 is invalid by virtue of defendants' failure to comply with the procedures prescribed in Ordinance 1035C for the promulgation of such ordinances. The CVZA prescribed various procedures that needed to be followed when a municipality enacted

a zoning ordinance. See MCL 125.584. Where those procedures were not adhered to, the enactment was deemed invalid. *Korash v Livonia*, 388 Mich 737, 746; 202 NW2d 803 (1972). But, the CVZA also specifically provided that "[t]he legislative body of a city or village may provide by ordinance for the manner in which regulations and boundaries of districts or zones shall be determined and enforced or amended, supplemented or changed." MCL 125.584(1).

While Ordinance 1035C allows citizens to petition the East Lansing City Council for adoption of a zoning amendment, East Lansing Zoning Ordinance, § 50-775, the council has discretion to take any action it deems appropriate on the submission of such a petition, East Lansing Zoning Ordinance, § 50-775(2)(a), (e). Further, the city council has authority to initiate zoning measures absent a citizen's petition. East Lansing Zoning Ordinance, § 50-31(a) ("The city council may of its own motion . . . prepare an ordinance amending or changing the district boundaries or the regulations herein established."). Thus, plaintiff's argument that Ordinance 1097 is void because it was enacted in violation of the procedures prescribed in Ordinance 1035C fails because Ordinance 1035C vests ultimate authority to enact a proposed zoning amendment with the municipal legislative authority. East Lansing Zoning Ordinance, § 50-775(2)(e); see *Penning v Owens*, 340 Mich 355, 360; 65 NW2d 831 (1954). Also, the East Lansing City Council plainly enjoys the authority to independently propose and enact zoning ordinances. East Lansing Zoning Ordinance, § 50-31(a); see *Penning, supra* at

362. Accordingly, we assume that the East Lansing City Council "proposed and recommended the adoption of [Ordinance 1097] upon its own initiative." *Penning, supra* at 360. By virtue of the council's independent action enacting Ordinance 1097--which plaintiff does not dispute fully complied with the CVZA--it is unnecessary for us to address plaintiff's argument that the procedures underlying the enactment of Ordinance 1097 did not conform to Ordinance 1035C.

IV

Plaintiff also argues that both Ordinance 1035C and Ordinance 1097 fail to advance reasonable governmental interests. We review constitutional challenges to zoning ordinances de novo. *Jott, Inc v Clinton Charter Twp*, 224 Mich App 513, 525-526; 569 NW2d 513 (1997). Zoning ordinances are presumed valid and the challenging party has the burden of proving otherwise. *Frericks v Highland Twp*, 228 Mich App 575, 594; 579 NW2d 441 (1998).

An individual may "challenge the validity" of a "zoning ordinance as a violation of his or her right to substantive due process." *Dorman v Clinton Twp*, 269 Mich App 638, 650; 714 NW2d 350 (2006). Such a challenge may be made "by showing '(1) that there is no reasonable governmental interest being advanced by the present zoning classification or (2) that an ordinance is unreasonable because of the purely arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question.'" *Id.*, quoting *Frericks, supra* at 594. A zoning ordinance will not survive a substantive due process challenge where "it does not

advance a reasonable governmental interest or because it does so unreasonably." *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 174; 667 NW2d 93 (2003).

Ordinance 1035C creates residential rental overlay districts designed

to preserve the attractiveness, desirability, and privacy of residential neighborhoods by precluding all or certain types of rental properties and thereby preclude the deleterious effects rental properties can have on a neighborhood with regard to property deterioration, increased density, congestion, noise and traffic levels and reduction of property values. The goal of the overlay district is to allow owners of property within residential neighborhoods to control the types of rental properties, if any, that are permitted in one-family dwellings within their neighborhood. It is also the purpose of the districts to achieve the following objectives:

(1) To protect the privacy of residents and to minimize noise, congestion, and nuisance impacts by regulating the types of rental properties;

(2) To maintain an attractive community appearance and to provide a desirable living environment for residents by preserving the owner occupied character of the neighborhood;

(3) To prevent excessive traffic and parking problems in the neighborhoods. [East Lansing Zoning Ordinance, § 50-773.]

The goal of "preserving the residential nature of a neighborhood" is a legitimate interest "that may be advanced by a zoning regulation." *Dorman, supra* at 651-652. Permissible governmental action of this type includes limiting the character of a neighborhood to owner-occupied dwellings to avoid the "deleterious effects rental properties can have" on neighborhoods located within a college community. See East Lansing Zoning Ordinance, § 50- 773. This Court has recognized that there are legitimate governmental interests underlying the creation of single-family zones. Furthermore, the family, while undergoing dramatic changes in the last half-century, remains a fundamental building block of society. This is true whether we speak of the traditional family or the modern concept of a functional family. . . .

. . . To say that a family is so equivalent to a ragtag collection of college roommates as to require identical treatment in zoning decisions defies the reality of the place of the family in American society, despite any changes that institution has undergone in recent years. Only the most cynical among us would say that the American family has devolved to the point of no greater importance or consideration in governmental decision making than a group of college roommates. [*Stegeman v Ann*

Arbor, 213 Mich App 487, 492; 540
NW2d 724 (1995).]

The record shows that single-family residences could be rented in the R-2 district prior to the enactment of Ordinance 1035C. East Lansing Zoning Ordinance, § 50-6; East Lansing Zoning Ordinance, § 50-262(3)(d); East Lansing Ordinance, §§ 6-175, ES-1001.1 through ES- 1001.2. Ordinance 1035C allows residents to limit or preclude such rentals within specified districts. East Lansing Zoning Ordinance, §§ 50-772 through 50-777. Zoning to preserve the residential character of a neighborhood by limiting the number of transient college students who can live in single-family dwelling housing has been recognized as a legitimate and reasonable governmental interest. *Stegeman*, *supra* at 492. Accordingly, Ordinance 1035C survives plaintiff's substantive due process challenge. *Dorman*, *supra* at 650.

Plaintiff nevertheless claims that Ordinance 1035C is superfluous, and thus unreasonable, because other East Lansing Ordinances proscribe the very conduct Ordinance 1035C was designed to address. Plaintiff's argument misconstrues the nature of Ordinance 1035C. East Lansing enacted general conduct restrictions on parking, noise, rental property maintenance, and disturbances prior to the enactment of Ordinance 1035C. See East Lansing Ordinance, § 6-175, 100.1 (property maintenance code constitutes the "minimum standards" for structures and premises); East Lansing Ordinance, §§ 26-51 *et seq.* (proscribing disorderly conduct), 26-81 *et seq.* (noise), 26-141 *et seq.* ("nuisance parties"); East Lansing Ordinance, §§ 44-294, 298, 300, 303 (conduct relating to vehicular parking). Assuming,

but not concluding that Ordinance 1035C serves only these interests, it is nevertheless an alternative designed to service them. Though the state may regulate conduct and behavior, individuals will and do disregard regulations. It is entirely reasonable for East Lansing to conclude that its ordinances regulating noise, traffic levels, and property maintenance will often be disregarded, requiring the application of the coercive power of the state. Ordinance 1035C attempts to avoid the need to apply coercive power while still meeting the goals outlined by treating a reasonably presumed major cause, college rental housing, of the expected violations.

Plaintiff's argument also necessarily implies that government may punish behavior, but may not seek to preclude it. Michigan jurisprudence plainly belies plaintiff's assertion. See *Delta Charter Twp v Dinolfo*, 419 Mich 253, 277; 351 NW2d 831 (1984); *Stegeman, supra* at 492.

Plaintiff also argues that Ordinance 1097 is unreasonable because it was not enacted pursuant to a master plan, but was enacted arbitrarily. MCL 125.581(2) directed that "[t]he land development regulations and districts authorized by this act shall be made in accordance with a plan designed to promote and accomplish the objectives of this act." The "plan" referenced in this section is a municipality's "master plan" created under the Municipal Planning Act, MCL 125.31 *et seq.* See *Nolan Bros of Texas, Inc v Royal Oak*, 219 Mich App 611, 614; 557 NW2d 925 (1996). "[T]he adoption of a master plan is tantamount to a legislative act." *Inverness Mobile Home Community, Ltd v Bedford*

Twp, 263 Mich App 241, 249; 687 NW2d 869 (2004). The reasonableness of zoning classifications must be evaluated in light of a city's master plan. *Id.*

After reviewing the East Lansing comprehensive plan, we reject plaintiff's argument that Ordinance 1097 was not enacted in accordance with that plan. East Lansing has adopted a comprehensive plan dividing the totality of its jurisdiction into eight "planning" areas. East Lansing Comprehensive Plan, Planning Areas 1-8, pp 9-110. Bailey-Strathmore is overwhelmingly located within Planning Area 5. See East Lansing Comprehensive Plan, Planning Areas 3, 5, pp 32, 56. According to the comprehensive plan, the rate of owner-occupancy of single-family dwellings in Planning Area 5 has declined with the advent of student housing. East Lansing Comprehensive Plan, Planning Area 5, pp 57-58. In an effort to reverse this trend, the plan recommends that "[c]reative ways" be implemented to increase the presence of "owner-occupied single-family homes" in the area, and that existing policies doing so "be supported." East Lansing Comprehensive Plan, Planning Area 5, p 65.

Ordinance 1097 created a R-O-1 district in Bailey-Strathmore, thereby limiting the rental of single-family dwellings in that district. East Lansing Zoning Ordinance, § 50-777(7). It thus achieves precisely the result sought by the master plan by limiting the capacity of Bailey-Strathmore homeowners to rent their dwellings. East Lansing Zoning Ordinance, § 50-774, 777(7). Accordingly, Ordinance 1097 is reasonable and therefore neither arbitrary nor capricious. MCL 125.581(2); *Inverness Mobile Home Community, Ltd*, *supra* at

V

Plaintiff also argues that Ordinance 1097 constitutes invalid spot zoning. Zoning regulation is designed to achieve the orderly development and use of land to promote the general welfare. See MCL 125.581. To ensure this, zoning “should proceed in accordance with a definite a reasonable policy.” *Essexville v Carrollton Concrete Mix, Inc*, 259 Mich App 257, 273; 673 NW2d 815 (2003), quoting *Anderson v Highland Twp*, 21 Mich App 64, 75; 174 NW2d 909 (1969); see MCL 125.581(2) (“The land development regulations and districts authorized by this act shall be made in accordance with a plan designed to promote and accomplish the objectives of this act.”). As a result, “zoning in a haphazard manner is not favored.” *Essexville, supra* at 273, quoting *Anderson, supra* at 75.

Spot zoning occurs where a zoning ordinance creates “a small zone of inconsistent use within a larger zone.” *Essexville, supra* at 272, quoting *Penning, supra* at 367-368. Such zoning is invalid and void “where it is without a reasonable basis.” *Id.* at 273, quoting *Anderson, supra* at 75.

[When a discrete zoning decision is made regarding a particular parcel of property—typically a decision involving an amendment or variance that results in allowing uses for specific land that are inconsistent with the overall plan as established by the ordinance—the courts will apply greater scrutiny. Those isolated or discrete decisions

are more prone to arbitrariness because they are micro in nature, i.e., the decisions are based on the particular land and circumstance at issue in the request for amendment or variance. [*Id.* at 274 (citation omitted).]

Ordinance 1097 was enacted pursuant to Ordinance 1035C and created an R-O-1 overlay district in Bailey-Strathmore. Ordinance 1097 did not alter that designation, but merely added a restriction precluding the rental of single-family dwellings. See East Lansing Zoning Ordinance, § 50-774, 50-777(7). Thus, no small zone of inconsistent use was created within a larger zone. *Essexville, supra* at 272; cf. *Penning, supra* at 367-368. Rather, the uses are essentially consistent throughout. Nor did Ordinance 1097 apply merely to a "particular parcel." See *Essexville, supra* at 275-276. It in fact governed hundreds of contiguous parcels within downtown East Lansing. See East Lansing Zoning Ordinance, § 50-777(7).

Plaintiff attempts to characterize Ordinance 1097 by reference only to his property, suggesting that it was impermissible spot zoning because he is "surrounded" by rental properties. However, plaintiff cannot isolate his parcel from Bailey-Strathmore in an effort to demonstrate spot zoning. See East Lansing Zoning Ordinance, § 50-777(7). Moreover, Ordinance 1097 was not zoning in a "haphazard manner." *Essexville, supra* at 273, quoting *Anderson, supra* at 75. It applied to a residential district to preserve the residential character of that

district, East Lansing Zoning Ordinance, § 50-773, and was thus planned and orderly in development, see MCL 125.581. Nor was it a "discrete zoning decision . . . made regarding a particular parcel of property." *Essexville, supra* at 274. As a consequence of being "clothed with a presumption of validity," *id.*, Ordinance 1097 is not void as impermissible spot zoning.

VI

Because Ordinance 1035C vests ultimate authority with the municipal legislative body to enact proposed zoning amendments, plaintiff's argument that Ordinance 1097 is void fails. Ordinance 1035C advances reasonable government interests and Ordinance 1097 is neither arbitrary nor capricious, nor invalid spot zoning.

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR
INGHAM COUNTY
GENERAL TRIAL DIVISION

AGRIS PAVLOVSKIS,
Plaintiff, OPINION AND ORDER

CASE NO. 05-523-NZ

HON. WILLIAM E. COLLETTE

CITY OF EAST LANSING and
SHARON A. REID, City Clerk,
Defendants.

At a session of said Court
Held in the city of Mason, county of Ingham,
This 6th day of DECEMBER, 2006

PRESENT: HON. WILLIAM COLLETTE

This matter comes before the Court of Plaintiffs Motion for Summary Disposition and Defendants' Cross-Motion for Summary Disposition, pursuant to MCR 2.116(C)(10). The Court being fully advised in the premises, GRANTS Defendants' Motion.

FACTS

On April 7, 2004, the City of East Lansing adopted Substitute Ordinance 1035C. The ordinance provides a means by which homeowners within certain residential zoning districts can petition the City Council to create an "overlay district" precluding rental use within a

particular residential neighborhood.¹ Section 50-775 of the ordinance lists the procedures for collecting signatures and other requirements to be followed in petitioning for an overlay district. The section further provides that, upon the City Clerk's verification of the signatures, the Clerk shall forward the petitions to the Zoning Department. After additional verification by the Zoning Department, the Zoning Administrator shall then draft an appropriate ordinance and forward it to the City Council for introduction and consideration.²

Following introduction of the proposed ordinance and aside from any additions or changes the Council makes to the proposed overlay district,³ the City Council puts the proposed ordinance "through all the procedures required by the City and Village Zoning Act. It is introduced, referred to the Planning Commission for a public hearing, and then returned to the City Council for another public hearing." Def's Brief at 14. Additionally, [a]ll of the requisite notices required by the City and Village Zoning Act are sent and all other procedural requirements of the Act [are] met." *Id.*

2 According to section 50-775(2)e of the ordinance, the City Council "may make additions or changes in the boundaries of the proposed overlay district to prevent spot zoning, to include or exclude areas that logically should have been included or excluded in the petition, to make the boundaries of the proposed overlay district abut boundary lines of other zoning districts and overlay districts, and to adopt an alternate ordinance in conformity with the suggested changes whether or not the two thirds majority requirement of property owners would still be met with the proposed changes." 3 See footnote 2.

In the present case, on October 19, 2004, the (valid) signatures of 298 residents of the Central Bailey Neighborhood District in East Lansing were submitted to the City Clerk. The accompanying petitions sought an overlay zoning district that would preclude rental use in 439 parcels located within the Central Bailey Neighborhood. The City Clerk sought the assistance of the City Assessor in verifying the signatures and their correlation to parcel ownership.

Following verification of the signatures, the petitions were forwarded to the Zoning Administrator, who prepared Ordinance 1097 which was introduced on October 19, 2004. On January 12, 2005, the Planning Commission held a public hearing on the proposed overlay district. At that meeting, Plaintiff expressed opposition to his property's inclusion in the district. The Planning Commission voted unanimously to recommend adoption of Ordinance 1097 by the City Council. On February 15, 2005, the City Council held a public hearing on the ordinance and deferred voting until its March 15, 2005, meeting and public hearing. At the March 15 hearing, Plaintiff's counsel appeared on Plaintiffs behalf and questioned the appropriateness of the boundaries created for the ordinance. Plaintiffs counsel asked City Council to amend the boundary line, excluding properties on Ann Street (including Plaintiffs). On March 15, 2005, after the hearing, the City Council adopted Ordinance 1097.

Plaintiff brought the present suit requesting that this Court declare both Substitute Ordinance 1035C and Ordinance 1097 invalid as a matter of law.

DISCUSSION

I. STANDARD OF REVIEW

A motion for summary disposition under MCR 2.116(C)(10) is proper when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). In *Smith v Globe Life Insurance Co*, 460 Mich 446, 454-55; 597 NW2d 28 (1999), the Michigan Supreme Court stated:

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties . . . in the light most favorable to the party opposing the motion.

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420, 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed facts exist. *Id.*

As the material facts in this case are not in dispute,

the Court must render a decision based on purely legal questions.

II. ZONING BY INITIATIVE

In *Korash v Livonia*, 388 Mich 737, 738; 202 NW2d 803 (1972), the Michigan Supreme Court asked: "Did the Legislature intend to authorize home-rule cities to enact zoning ordinances both by legislative action and initiative, or just by legislation?" The Court's answer was that the "[city] charter-authorized right to initiative" is not "compatible with the city authority to zone." *Id.* at 744. Initiatory amendments to a city's zoning ordinance, according to the Court, are enacted by a procedure contrary to that required by zoning law. *See id.* at 745. Most troubling to the Court in *Korash* was the lack of deliberative procedures followed in a zoning amendment passed solely by initiative. The Court stated:

The initiative makes no provision that (1) a tentative report on the proposed ordinance be made by the . . . Planning Commission; (2) a public hearing be held by the . . . Planning Commission; (3) a final report be made by the . . . Planning Commission; (4) publication of notice of hearing be made; (5) a public hearing be held by the . . . City Council; and (6) affected property owners have the opportunity to file a written objection to the proposed zoning change and to force a 3/4 vote of the . . . City Council. *Id.*

Thus, the principal rationale for invalidating an

initiatory zoning amendment⁴ is that such a process—where the initiative is the sole means used for enacting the amendment—does not comply with Michigan zoning law.

In the present case, however, the signatures and accompanying petitions submitted to the City Clerk were only a means of proposing a zoning amendment that could be adopted only by the City Council. The proposed overlay district could not be passed by initiative alone—which, in this Court's opinion, means that Ordinance 1097 was not an initiatory zoning amendment. If, for example, the City Council had taken no action on the proposed ordinance, the proposal would have been "deemed denied" after 6 months. *See* Substitute Ordinance 1035C, sec. 54-776(4). Alternatively, the City Council could have summarily denied the proposed ordinance upon its introduction. *See id.* at sec. 54-776(3).

⁴ Note that, as indicated by case law, the problems associated with zoning by *initiative* are not equally applicable to the use of the *referendum* to repeal/approve zoning ordinances. In *Jacobs, Visconsi & Jacobs Co v City of Burton*, 108 Mich App 497, 503; 310 NW2d 438 (1981), the court noted that where a referendum on an "existing zoning classification is involved, we do not believe there is compelling reason to deny a referendum if petitioners otherwise meet the statutory requirements." Likewise, in *Chynoweth v City of Hancock*, 107 Mich App 360, 362; 309 NW2d 606 (1981), the court held that an "amendatory zoning ordinance was a legislative act subject to the right of referendum." In 1974, the Michigan Supreme Court split 3-3 (with one abstainer) on whether an amendatory zoning ordinance was an administrative or legislative act, and thus whether the right of referendum attached. *See West v City of Portage*, 392 Mich 458, 461-72; 221 NW2d 303 (1974).

Thus, in the present case, the operation of Substitute Ordinance 1035 and the effect of the petitions constituting proposed Ordinance 1097 were to request a zoning amendment from the City Council. The City Council had, in its sole legislative discretion, the authority to modify, reject, or accept the proposed overlay district. The proposed ordinance might be termed an "agenda-setting" mechanism, as if one or more residents had written letters to the City Council requesting a particular zoning change. Accordingly, Plaintiff's numerous arguments⁵ for invalidating Substitute Ordinance 103.5C and Ordinance 1097 miss the mark. Those arguments incorrectly presume that the process which was employed by the Bailey neighborhood residents pursuant to Substitute Ordinance 1035C directly enacted Ordinance 1097.

III. PROPERLY ENACTED ZONING AMENDMENT

Before the Court is a zoning amendment (Ordinance 109) that was adopted pursuant to

⁵ Such arguments include: that Substitute Ordinance 1035C violates the City and Village Zoning Enabling Act by delegating a legislative function to residents and by failing to require sworn affidavits of petition circulators; that Ordinance 1097 was enacted by way of arbitrary fiat of property owners, was not based on any plan, and allows residents to engage in invalid spot zoning; and that Ordinance 1097 was improperly adopted because the City Assessor assisted the City Clerk in verifying signatures and the petitions allegedly did not contain the requisite 2/3 of parcel owners' signatures. Specifically, while much has been made in this case about the sufficiency of the signatures contained in the petitions, the Court does not find that question particularly relevant, as the petitions were merely information provided for the City Council's consideration of Ordinance 1097.


the deliberative procedures required by Michigan zoning law. The parties do not dispute that the actions taken by the City Council after being presented with Ordinance 1097 complied with the City and Village Zoning Enabling Act. The Planning Commission held a public hearing on the proposed overlay district and provided an unequivocal recommendation to the City Council. The City Council then held public hearings on the proposal, including two in which Plaintiff's specific concerns were heard. Proper notice of the hearings was given to all concerned residents. Clearly, the lack of deliberative procedures inherent in the zoning-by-initiative process, which so troubled the Court in *Korash*, is not found in the present case.

CONCLUSION

It is true that the process of enacting a zoning amendment solely by initiative inherently conflicts with the requirements of Michigan zoning law. However, in the present case, Substitute Ordinance 1035C serves only as a mechanism for placing a proposed zoning amendment under the City Council's consideration. Where the City Council ultimately adopts a proposed zoning amendment—here, Ordinance 1097—after giving proper notice and holding numerous public hearings, there is nothing for this Court to consider invalidating.

THEREFORE IT IS ORDERED that Defendant's Cross-Motion for Summary Disposition is **GRANTED**.

In compliance with MCR 2.602(A)(3), this decision resolves the last pending claim and closes the case.

A handwritten signature in cursive script, appearing to read "Collette", written in dark ink.

Hon. William E. Collette Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I mailed a copy of the attached **OPINION AND ORDER** upon each attorney of record, or upon the parties, by placing the true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail at Mason, Michigan, on Dec. 6th, 2006.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF
INGHAM

AGRIS PAVLOVSKIS,
an individual,

FILE NO.: 05-523-CZ

Plaintiff, HON.:W.E. COLLETTE

v.

THE CITY OF EAST LANSING,

and,

SHARON A. REID, as East Lansing
City Clerk,

Defendants.

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**PLAINTIFF'S FIRST AMENDED REQUEST FOR
DECLARATORY RELIEF AND ORDER TO
DECLARE SUBSTITUTE ORDINANCE 1035C
UNCONSTITUTIONAL, TO DECLARE THE
INVALIDITY OF PETITIONS REQUIRED TO
PROPOSE ZONING ORDINANCE 1097, AND TO
DECLARE ORDINANCE 1097 VOID**

NOW COMES, Plaintiff, Agris Pavlovskis, and hereby files this Request for Declaratory Relief and Order to Declare Substitute Ordinance 1035C Unconstitutional, to Declare the Invalidity of Petitions Required to Propose Zoning Ordinance 1097, and to Declare Ordinance 1097 Void. The Plaintiff requests that this Court declare that Ordinance 1035C is unconstitutional and violates substantive due process rights guaranteed by the Constitution of the State of Michigan and the Constitution of the United States. The Plaintiff requests that this Court declare that Substitute Ordinance 1035C is invalid on its face because there is no reasonable governmental interest being advanced and the Ordinance is arbitrary and capricious as applied to the Plaintiff's private property rights. Further, the Plaintiff requests the Court to find that the East Lansing City Clerk breached her duty to verify signatures on initiatory petitions, that the petitions for introduction of Ordinance 1097 do not contain sufficient valid signatures of property owners within the unlawful overlay district; that the East Lansing City Clerk breached her duty by allowing the City Assessor to verify signatures; and that the East Lansing City Clerk breached her duty by verifying signatures on petitions when it is apparent there was tampering

with the dates on the petitions and the petitions do not contain circulator certifications. Plaintiff states the following in support of his Request:

GENERAL ALLEGATIONS

1. The Plaintiff is a resident and homeowner within the City of East Lansing.

2. Prior to the enactment of Substitute Ordinance 1035C, Plaintiff's property was zoned R1.

3. For the past 17 years Plaintiff has been a resident of the Central Bailey-Strathmore Neighborhood.

4. Currently, Plaintiff's property is zoned R-O-1, which is a Residential Rental Restriction Overlay District created by zoning Ordinance 1097.

5. Plaintiff appeared at the Planning Commission meetings and the City Council meetings regarding Ordinance 1097 and participated in the proceedings regarding Ordinance 1097.

6. Ordinance 1097 prohibits a resident, that does not already have a rental license, from applying for a rental license at any time.

7. The Plaintiff has an interest and property rights that are affected by Ordinance 1097.

8. Ordinance 1097 is an unreasonable restriction on the Plaintiff's private property rights.

9. Ordinance 1097 unfairly diminishes the Plaintiff's property value.

10. Substitute Ordinance 1035C was enacted by the East Lansing City Council on April 15, 2004. It establishes the process for creating an overlay district restricting rental licenses and the ability to apply for a rental license if an individual is a private property owner within the overlay district.

11. The Constitutions of the State of Michigan and the United States require a zoning ordinance to be reasonable.

12. Substitute Ordinance 1035C is invalid on its face because it fails to advance a real and substantial government interest.

13. Substitute Ordinance 1035C is arbitrary and capricious as applied to the Plaintiff's private property rights.

14. The Defendants City of East Lansing and the East Lansing City Clerk are located in the County of Ingham.

15. The City of East Lansing derives its authority to zone from the Zoning Enabling Act. MCL 125.581

16. Zoning is a purely legislative function and may not be delegated.

17. The singling out of a small area for treatment different from that of similar surrounding

land indistinguishable from it in character, for the economic benefit of the owner of that land or to his economic detriment, is invalid spot zoning.

18. Substitute Ordinance 1035C delegates the legislative function of zoning to individuals in the community.

19. Substitute Ordinance 1035C allows individuals in the community to single out small areas of land for treatment different from that of similar surrounding land indistinguishable in character for the economic benefit of some landowners and to the economic detriment of other landowners and is invalid spot zoning.

20. Substitute Ordinance 1035C, Division 5, Sec. 50-775, provides the procedures to establish a residential overlay district. See attached Exhibit 1.

21. To establish a Residential Overlay District, citizens within a community circulate initiatory petitions provided by the City Clerk, in the proposed overlay district.

22. Upon obtaining two-thirds of the property owners' signatures within a proposed overlay district, the petitions are presented to the City Clerk for verification of signatures. Substitute Ordinance 1035C, Div. 5, Sec. 50-775(2).

23. Substitute Ordinance 1035(C) specifically states that "the City Clerk *shall* verify the signatures on the petitions." (emphasis added)

24. "Shall" is a mandatory term in the law. Black's Law Dictionary defines "shall" as follows:

Shall. As used in statutes, contracts, or the like, this word is generally imperative or mandatory. . . . It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty, which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be enforced, unless a contrary intent appears.

25. It is mandatory that the City Clerk verify signatures on initiatory petitions submitted pursuant to Substitute Ordinance 1035C.

26. The City Clerk does not have discretion to decline to verify signatures on initiatory petitions submitted pursuant to Substitute Ordinance 1035C.

27. The petitions were not verified by the City Clerk and in fact were verified by the City Assessor, contrary to Substitute Ordinance 1035C, Sec. 50-775(2). See attached Exhibit 2, Memorandum; and Exhibit 3, Preliminary Staff Report, page 4.

28. The City Clerk breached her duty, pursuant to Substitute Ordinance 1035C, to verify the signatures on the petitions to propose Ordinance 1097.

29. Upon verification of the signatures by the City Clerk, the initiatory petitions are then to be forwarded to the Zoning Administrator to determine whether the petitions are in conformity with the remaining conditions of section 50-775.

30. Upon a determination that the petitions are in conformance with section 50-775, the Zoning Administrator *shall* draft an appropriate ordinance and forward it to the City Council for introduction. Substitute Ordinance 1035C, Div. 5, Sec.50-775(2)(a). (emphasis added)

31. The East Lansing City Charter, Chapter 6, Section 8, provides requirements for initiatory petitions. See attached Exhibit 4.

32. Pursuant to the East Lansing Charter, Chapter 6, Section 8, an initiatory petition *shall* have attached a sworn affidavit by the circulator thereof, stating the number of signers thereto and that each signature thereon is the genuine signature of the person whose name it purports to be, and that it was made in the presence of the affiant. (emphasis added)

33. The initiatory petitions circulated to introduce Ordinance 1097, do not have attached a sworn affidavit by the circulators in violation of the East Lansing Charter, Chapter 6, Section 8.

34. Substitute Ordinance 1035C, Sec. 50-775, fails to require a sworn affidavit to be attached to petitions to impose Residential Rental Restrictions in Overlay Districts, as required by the City Charter.

35. By not requiring a sworn affidavit to be attached to said petitions there exists no accountability as to the validity of the signatures.

36. The City Assessor verified the petitions using the property tax roles. See attached Exhibit 5.

37. The ordinance provides that only property owners are eligible to sign the petitions.

38. Proper verification requires a comparison to the property owners list. See attached Exhibit 6.

39. Individuals appearing on the property tax roles are not always the property owners. See attached Exhibit 5 & 6.

40. When the City Assessor counted the number of alleged property owners from the tax roles his totaled numbers were erroneous.

41. When adding up the check marks, on the tax roles, of alleged verified property owners, the City Assessor totaled the check marks per page and wrote the number at the bottom of the page.

42. When the totals per page are added up they equal 292. See attached Exhibit 5.

43. There are 297 check marks.

44. The City Assessor stated in a Memo to the City Clerk that there are 298 valid signatures and 17 invalid signatures. See attached Exhibit 2.

45. The City Assessor claimed there is a total of 315 signatures.

46. The signatures on the petitions actually equal 327. See attached Exhibit 7.

47. The procedure the City Assessor utilized to verify signatures is flawed and the numbers do not add up properly.

48. The City Assessor does not have the authority, pursuant to Substitute Ordinance 1035C, to verify signatures, and none of the signatures have been verified.

49. Planning Commission Member Dale Springer, who owns property within the overlay district for proposed Ordinance 1097, said he did not sign the petition and neither did his wife. See attached Exhibit 8, Minutes of the Planning Commission, pages 5 & 6.

50. A false signature of Dawn Springer, wife of Staff Member Dale Springer, is on the petition.

51. If Dawn Springer's signature is forged, then all of the signatures on the petitions to propose Ordinance 1097 are suspect.

52. There are a total of 439 parcels of property in the Bailey overlay district.

53. Two-thirds of the property owners' signatures equals 292.6.

54. The petitions circulated do not have the two-thirds of the signatures of property owners pursuant to Substitute Ordinance 1035C.

COUNT I

SUBSTITUTE ORDINANCE 1035C IS UNCONSTITUTIONAL ON ITS FACE BECAUSE IT FAILS TO ADVANCE A REAL AND SUBSTANTIAL GOVERNMENT INTEREST

55. Plaintiff by reference hereby incorporates paragraphs 1 through 54.

56. Substitute Ordinance 1035C provides the procedures to create a residential rental restriction overlay district within the City of East Lansing.

57. Plaintiff is a property owner in the Bailey Strathmore residential rental restriction overlay district which was implemented when Ordinance 1097 was enacted pursuant to the procedures set forth in Substitute Ordinance 1035C.

58. Plaintiff is prohibited from applying for or receiving a rental license since the enactment of Ordinance 1097.

59. The purported purpose of Substitute Ordinance 1035C is to:

- (1) To protect the privacy of residents, minimize noise, congestion, nuisance impacts

by regulating the types of rental properties

(2) To maintain an attractive community appearance and to provide a desirable living environment for residents by preserving the owner occupied character of the neighborhood

(3) To prevent excess traffic and parking problems in the neighborhoods. (See attached Exhibit 1, Substitute Ordinance 1035C, Sec. 50-773)

60. Prior to the passage of Substitute Ordinance 1035C, the City of East Lansing enacted Ordinance 900, which defines permitted uses of single family dwellings and restricts the number of roomers that may occupy a single family dwelling.

61. Also prior to the enactment of Substitute Ordinance 1035C, the City of East Lansing enacted Ordinance 915 for the purpose of regulation, inspection and licensing of rental property.

62. In addition to the aforementioned ordinances, the City of East Lansing has enacted ordinances regulating noise, nuisance properties, parking restrictions in neighborhoods, blight, snow removal, grass mowing, and other nuisances.

63. There is no reasonable government interest being advanced by Substitute Ordinance 1035C because there are already ordinances in place for the stated purpose for which it was enacted:

a. The city currently has ordinances that restrict noise levels and set time period for "quiet hours."

b. The city currently has ordinances that prevent parking problems, congestion and overnight parking on the street.

c. The city currently has ordinances that require the removal of snow, grass and other blights, to maintain an attractive community appearance.

d. The city currently has ordinances that regulate rental properties by requiring the inspection of rental properties to ensure the properties are properly maintained and preclude the deleterious effects that rental properties can have on a neighborhood.

e. The city currently has ordinances that limit the number of persons that can occupy a single family residence as a rental to reduce traffic and congestion.

64. The stated purpose for the enactment of Substitute Ordinance 1035C is a mere guise and does not bear a real and substantial relationship to the health, safety and welfare of the residents of East Lansing because ordinances are currently in place to promote the health safety and welfare of the residents and requests for rental licenses have steadily declined and the number of existing licenses have also steadily declined since the city enacted Ordinances 900 and 915.

65. Substitute Ordinance 1035C is

unreasonable and invalid on its face as applied to Plaintiff's property because his property is surrounded by rental properties to the east, west and south.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court Declare that Substitute Ordinance 1035C is invalid on its face because no real and substantial government interest is being advanced by the total restriction of rental properties in Plaintiff's area and because Substitute Ordinance 1035C is unreasonable because of the purely, arbitrary, capricious and unfounded exclusion of rental license property in Plaintiff's area, which violates the Constitution of the State of Michigan and the Constitution of the United States by interfering with the Plaintiff's substantive due process rights.

COUNT II

ORDINANCE 1035C IS A PURELY ARBITRARY, CAPRICIOUS AND UNFOUNDED EXCLUSION OF OTHER TYPES OF LEGITIMATE LAND USE AS APPLIED TO PLAINTIFF'S PROPERTY

66. Plaintiff by reference hereby incorporates paragraphs 1 through 65.

67. The Plaintiff's property is located on the southern border of the residential rental restriction overlay district created by the enactment of Ordinance 1097, pursuant to Substitute Ordinance 1035C.

68. Plaintiff's property fronts the north side

of the street that runs east and west.

69. The properties on the south side of the street where the Plaintiff resides are not included in the residential rental restriction overlay district created by Ordinance 1097.

70. Plaintiff's property is surrounded by rental properties to the east, west and south.

71. Plaintiff's property is located on a main pedestrian corridor from campus and downtown East Lansing to rental residences in the Bailey Neighborhood.

72. Ordinance 1097 has the effect of singling out the Plaintiff's property from that of similar surrounding property indistinguishable in character, to his economic detriment.

73. Substitute Ordinance 1035C delegates the legislative function of zoning to owners of property within residential neighborhoods.

74. The Zoning Enabling Act does not enable residents within a residential neighborhood to zone by petition or any other means.

75. The City of East Lansing has violated the Zoning Enabling Act by enacting Substitute Ordinance 1035C which delegates a legislative function to property owners within residential neighborhoods to control the types of rental properties that are permitted in one-family dwellings in their neighborhoods.

76. The State of Michigan's statutory scheme specifically designed for amending city ordinances emphasizes the high level of expertise required for the efficient administration of complex legislation.

77. The residential rental restriction overlay districts that are enacted pursuant to Substitute Ordinance 1035C are not based upon a master plan, studies or any type of expertise.

78. The residential rental restriction overlay district enacted pursuant to Substitute Ordinance 1035C, which affects the Plaintiff's property, is created in an arbitrary manner and places an unreasonable restriction on the Plaintiff's use of his property, the purpose the Ordinance seeks to achieve is a guise because the purpose has already been achieved by previous ordinances.

79. The residential rental restriction overlay districts are enacted by way of arbitrary fiat of property owners within residential neighborhoods because the property owners are not following the city's overall master plan, but arbitrarily determine which areas should be restricted as rental properties or nonrental properties.

80. The enactment of residential rental restriction overlay districts allows residents in residential neighborhoods to engage in invalid spot zoning.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court Declare that Substitute

Ordinance 1035C is invalid by allowing invalid spot zoning to occur in an arbitrary and capricious manner which violates the Plaintiff's substantive due process rights guaranteed in the Constitution of the State of Michigan and the Constitution of the United States.

COUNT III

THE CITY CLERK BREACHED HER DUTY PURSUANT TO SUBSTITUTE ORDINANCE 1035C TO VERIFY THE SIGNATURES ON PETITIONS

81. Plaintiff by reference hereby incorporates paragraphs 1 through 80.

82. Substitute Ordinance 1035C, Sec. 50-775(2) requires the City Clerk to verify signatures on petitions submitted by citizens to initiate proposed overlay districts.

83. The City Clerk breached her duty by failing to verify the signatures for the Bailey Strathmore overlay district.

84. Substitute Ordinance 1035C, Sec. 50-755(2), does not grant the City Assessor authority to verify signatures.

85. The City Assessor improperly verified the signatures on the petition for the Bailey Strathmore overlay district contrary to Substitute Ordinance 1035C, Sec. 50-775.

86. None of the signatures on the initiatory

petitions required to propose Ordinance 1097 are properly verified.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court Declare that the signatures obtained on the initiatory petition to propose Ordinance 1097 have not been verified pursuant to Substitute Ordinance 1035C, that Ordinance 1097 is void, and that a subsequent ordinance for an overlay district that includes the same parcels may not be introduced for 1 year pursuant to Substitute Ordinance 1035C, Div. 5, Sec. 54-776(3), so that Plaintiff may apply for a rental license.

COUNT IV

PETITIONS CIRCULATED TO INITIATE
RESIDENTIAL RENTAL RESTRICTION
OVERLAY DISTRICTS PROVIDED BY
THE CITY CLERK'S OFFICE VIOLATE
THE CITY CHARTER SINCE THERE ARE
NO CIRCULATORS' CERTIFICATIONS

87. Plaintiff by reference hereby incorporates paragraphs 1 through 86.

88. Substitute Ordinance 1035C, provides procedure for members of a community, within the City of East Lansing, to initiate Residential Rental Restriction Overlay Districts by initiatory petitions.

89. Chapter 6 of the City Charter provides for City Legislation.

90. Chapter 6, Section 8, provides the form of an initiatory petition.

91. Section 8, in part, requires the following: "To each petition paper there *shall* be attached a sworn affidavit by the circulator thereof, stating the number of signers thereto and that each signature thereon is a genuine signature of the person whose name it purports to be, and that it was made in the presence of the affiant." (emphasis added)

92. The petitions provided by the City Clerk's Office do not contain any certification for the circulators.

93. The requirement to have a certification of the circulator directly eliminates serious potential for fraud.

94. Dale Springer, Staff Member of the Planning Commission, admits on the record at the January 12, 2005, Planning Commission meeting the following: "He did not sign the petition. He was not at home when it was circulated. He noted that his property has been listed as signed, but that his wife did not sign the petition, either." Planning Commission Minutes January 12, 2005, pages 5 & 6.

95. If one signature is forged, then all the signatures are suspect and there exists a serious potential for fraud when circulators obtain signatures on petitions that have no certification.

96. The petitions are required to have

circulator certifications pursuant to Chapter 6, Section 8, of the City Charter.

97. The City Clerk failed to perform the duty of verifying signatures and she failed to invalidate improper signatures.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court Declare that the initiatory petition provided by the City Clerk's Office does not comply with the East Lansing City Charter, that all signatures on the initiatory petitions to propose Ordinance 1097 are invalid, that Ordinance 1097 is void, and that a subsequent ordinance for an overlay district that includes the same parcels may not be introduced for 1 year pursuant to Substitute Ordinance 1035C, Div. 5, Sec. 54-776(3), so that Plaintiff may apply for a rental license.

COUNT V

PETITIONS FOR INTRODUCTION OF ORDINANCE 1097 DO NOT CONTAIN SUFFICIENT VERIFIED SIGNATURES OF PROPERTY OWNERS WITHIN THE PROPOSED DISTRICT

98. Plaintiff by reference hereby incorporates the allegations contained in paragraphs 1 through 97.

99. Substitute Ordinance 1035C, Sec. 50-775(1)(c), provides as follows: Only one owner of each parcel will count towards the two third requirement.

100. The City Clerk contends that there are

439 properties located in the Bailey Strathmore R-O-1 Overlay District.

101. Two-thirds of 439 parcels equals 292.6.

102. Therefore, 293 signatures are required to be verified as valid by the City Clerk for referral of the petitions to the Zoning Administrator.

103. The City Assessor asserts that there are 315 total signatures on the petitions.

104. The City Assessor asserts that the petitions submitted for the Bailey Strathmore R-O-1 Overlay District contain 298 valid signatures, 68% of the total parcels in the proposed district, and 17 invalid signatures.

105. Two hundred and ninety eight valid signatures is actually 67.88%

106. Upon reviewing the petitions, there are actually 327 total signatures.

107. Not one signature was properly verified.

108. Further, there are 42 total duplicate signatures 21 of said duplicate signatures are invalid. See attached Exhibit 9.

109. Substitute Ordinance 1035C, Sec. 50-775(1)(d), provides as follows: Each person signing the petition must also enter, on the petition, adjacent to their signature, the date that the person signed the petition.

110. Further again, 7 signatures on the petition are incompletely dated and therefore invalid. See attached Exhibit 10.

111. All 7 signatures that are incompletely dated were wrongfully deemed valid by the City Assessor.

112. Upon reviewing the petitions and the property owner records, 6 non-property owners wrongfully signed the petitions. See attached Exhibit 11.

113. The City Assessor wrongfully deemed valid 5 of these signatures.

114. The City Assessor deemed invalid 1 signature because the signer did not live within the proposed overlay district. See attached Exhibit 12.

115. The City Assessor invalidated 3 signatures because they do not appear on the face of the petition. See attached Exhibit 12.

116. The City Assessor deemed invalid 1 signature because the address is illegible. See attached Exhibit 12.

117. The City Assessor deemed invalid 1 signature because of an incomplete address. See attached Exhibit 12.

118. The City Assessor deemed valid 6 signatures that are in fact invalid for various reasons. See attached Exhibit 13.

119. There are actually 327 total signatures and 45 ought to be invalidated. Therefore, the petitions do not have the required two-thirds signatures of property owners as required by Substitute Ordinance 1035C.

120. Because 45 signatures on the petitions are invalid, only 64.2%, of the property owners within the proposed overlay district appear on the petitions.

121. The City Clerk erred in presenting the petitions to the Zoning Administrator.

122. The initiatory petitions fail to have the proper number of signatures required to present Ordinance 1097 to the East Lansing City Council.

WHEREFORE, Plaintiff respectfully requests this Honorable Court Declare that there are not a sufficient number of valid signatures to support Ordinance 1097; therefore, Ordinance 1097 is void and that a subsequent ordinance for an overlay district that includes the same parcels may not be introduced for 1 year pursuant to Substitute Ordinance 1035C, Div. 5, Sec. 54-776(3), so that Plaintiff may apply for a rental license.

VI

THAT THE CITY CLERK BREACHED HER
DUTY PURSUANT TO SUBSTITUTE
ORDINANCE 1035C BY ALLOWING THE
CITY ASSESSOR TO VERIFY SIGNATURES
ON ONE PETITION CIRCULATED BY TWO
CIRCULATORS

123. Plaintiff by reference hereby incorporates paragraphs 1 through 122.

124. Substitute Ordinance 1035C, Sec. 50-775(1)(b), provides for the following procedure: "Each petition must be circulated by a person who owns property within the proposed district and be signed by the circulator."

125. A circulator is required to sign the petition to verify that each signature is the genuine signature of the person whose name it purports to be.

126. Substitute Ordinance 1035C, Sec. 50-775(1)(b), refers to "a person" not, "persons".

127. Substitute Ordinance 1035C, Sec. 50-775(1)(b), refers to "the circulator" not, "circulators".

128. When two circulators circulate one petition there is a lack of accountability since there is no way to determine which circulator obtained which signature.

129. It is the duty of the City Clerk to verify signatures.

130. The City Clerk has experience in verifying signatures on petitions because it is the Clerk's duty to verify signatures for elections, initiatory petitions and referendums.

131. Substitute Ordinance 1035C does not authorize the City Assessor to verify signatures on the petitions submitted to the City Clerk.

132. The City Assessor does not possess the proper skills and knowledge as to the guidelines for verifying signatures on petitions.

133. The City Clerk has the requisite experience to know that only one circulator can circulate a particular petition.

134. One petition circulated for the Bailey Strathmore R-O-1 overlay district was circulated by two circulators. See Exhibit 7, pages 31-34.

135. Said petition contained 22 signatures. Nineteen of them were improperly verified by the City Assessor. See attached Exhibit 14.

136. The City Clerk breached her duty to verify the petitions pursuant to Substitute Ordinance 1035(C), Sec. 50-775(2).

137. The 19 signatures that were obtained by two circulators should have been deemed invalid by the City Clerk.

138. The lack of accountability in this matter gives rise to a serious potential for fraud.

139. The failure to include a certification by the circulator gives rise to a serious potential for fraud.

140. Nineteen additional signatures are invalid.

141. The 19 signatures identified by the

Plaintiff, in this Count, and the 45 signatures identified in Count III, equals 64 signatures that are invalid.

142. There are actually 327 signatures, and 64 are invalid. Therefore, the petitions do not have the required two-thirds signatures of property owners as required by Substitute Ordinance 1035C.

143. Because 64 signatures on the petitions are invalid, only 59.9% of the property owners within the proposed overlay district appear on the petitions.

144. The initiatory petitions fail to have the proper number of signatures required to present Ordinance 1097 to the East Lansing City Council.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court Declare that the East Lansing City Clerk breached her duty to properly verify signatures in accordance with Substitute Ordinance 1035C, Sec. 50-775(2), that the petitions do not have a sufficient number of valid signatures to propose Ordinance 1097, that Ordinance 1097 is void, and that a subsequent ordinance for an overlay district that includes the same parcels may not be introduced for 1 year pursuant to Substitute Ordinance 1035C, Div. 5, Sec. 54-776(3), so that Plaintiff may apply for a rental license.

VII

THE EAST LANSING CITY CLERK BREACHED HER DUTY PURSUANT TO SUBSTITUTE ORDINANCE 1035C TO VERIFY SIGNATURES

ON THE INITIATORY PETITIONS
FOR INTRODUCTION OF ORDINANCE
1097 WHEN IT IS APPARENT THERE
WAS TAMPERING WITH THE DATES
ON THE PETITION

145. Plaintiff by reference hereby incorporates paragraphs 1 through 144.

146. Pursuant to Substitute Ordinance 1035C, Sec. 50-775(2), it is the duty of the City Clerk to verify the signatures on initiatory petitions presented to the Clerk for review.

147. The initiatory petitions provided to members of the community, by the City Clerk, state that the circulators must sign and date the petitions when they are turned in to the City Clerk. See attached Exhibit 7.

148. This is required because any signatures dated after the circulator signed and dated the petitions would be deemed invalid.

149. Upon review of the petitions, there was tampering with at least two petitions dates.

150. On page 10, of the petitions, (Exhibit 7), the circulator originally signed the petition on October 6, 2004.

151. Because the petition was signed and dated on October 6, 2004, the six signatures on the petition are invalid as they were all dated after the date the circulator signed and dated the petition.

The following facts appear on the petition.

(A) The original month was written as the number 10 and was changed to 18 and used as a day.

(B) The original signature date of the 6th was scribbled over.

(C) The written month of "Oct." was inserted in front of the original date of the month.

152. The dates were tampered with so the 6 signatures on the petition are invalid.

153. The signatures were deemed valid by the City Assessor.

154. On page 54 of the petitions, (Exhibit 7), the original signed date of the circulator was October 15, 2004.

155. Someone placed a line through the original 5 to make it appear as if it were signed on the 18th.

156. There was tampering with the date placed on the petition by the circulator.

157. If the date had remained October 15, 2004, 3 signatures would be invalid because the signers would have signed subsequent to the date of the circulator's signature.

158. The 3 signatures that appear on the petition subsequent to the original date of the

circulator are invalid.

159. The tampering of dates on the petitions gives serious rise to the potential for fraud.

160. It is not a coincidence that the dates tampered with have both been changed to October 18, 2004, the day the petitions were submitted to the City Clerk.

161. The East Lansing City Clerk had a duty, pursuant to Substitute Ordinance 1035C to review the petitions and the contents, including the circulators' signatures and dates.

162. The City Clerk breached her duty to properly verify the petitions completely by allowing the City Assessor to verify the signatures on the petitions.

163. The 9 signatures identified are invalid.

164. The 45 signatures identified by the Plaintiff in Count III, the 19 signatures identified by the Plaintiff in Count IV, and the 9 signatures identified in this Count equals 72 signatures that ought to be invalid.

165. There are actually 327 signatures, and 72 ought to be deemed invalid. Therefore, the petitions do not have the required two-thirds signatures of property owners as required by Substitute Ordinance 1035C.

166. Because 72 signatures on the petitions

are invalid only 58% of the property owners within the proposed overlay district appear on the petitions.

167. The initiatory petitions do not have the proper number of signatures as required to propose Ordinance 1097 to the East Lansing City Council.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court Declare that the East Lansing City Clerk breached its duty to properly verify petitions in accordance with Substitute Ordinance 1035C, Sec. 50-775(2), that the petitions contain a insufficient number of signatures to propose Ordinance 1097, and that Ordinance 1097 is void, and that a subsequent ordinance for an overlay district that includes the same parcels may not be introduced for 1 year pursuant to Substitute Ordinance 1035C, Div. 5, Sec. 54-776(3), so that Plaintiff may apply for a rental license.

Respectfully submitted,

Dated: _____ /s/ _____

CYNTHIA LAW

STATE OF MICHIGAN
IN THE CIRCUIT COURT COUNTY OF
INGHAM

AGRIS PAVLOVSKIS,

FILE NO: 05-523-CZ

Plaintiff,

JUDGE COLLETTE

•VS•

THE CITY OF EAST LANSING and
SHARON A. REED,

Defendants.

MOTION TO AMEND

Before the Honorable William E. Collette, Circuit
Judge, Ingham County, Michigan –Wednesday,
March 22, 2006.

APPEARANCES:

CYNTHIA M. LAW P-52833
P.O. Box 12082
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(517) 420-0068

On behalf of the Plaintiff.

THOMAS M. YEADON, P-38237
601 Abbott Road
East Lansing, MI 48823
(517) 351-0280

On behalf of the Defendants.

Mason Michigan

March 22, 2006

9:37 a.m.

RECORD

THE COURT: Pavlovskis, I hope I said it right, versus City of East Lansing, 05-523-CZ. Who's (*sic*) motion, please?

MS. LAW: Thank you, Your Honor. May it please the Court, Cynthia Law appearing on behalf of the Plaintiff, Agris Pavlovskis, who is present in the courtroom at this time. We are here on Plaintiff's motion to amend his request for declaratory relief pursuant to Michigan Court Rule 2.118, which provides that leave shall be freely granted to amend a request for declaratory relief when justice requires.

Also, Michigan Court Rule 2.203(A) provides that pleadings must state all claims against the opposing party. And we believe that this would be a compulsory joinder situation. Upon reviewing documents that were discovered during discovery, it became apparent that the Plaintiff's substantive due process rights are possibly being violated. And we believe that we will show this as a result of substitute ordinance 1035c, which was the enabling ordinance that allowed ordinance 1097 to be enacted.

Ordinance 1097, Your Honor, is a restriction on the Plaintiff's property regarding his ability to obtain any type of rental license in his neighborhood. And 1035c is the ordinance that allowed ordinance 1097 to be passed. It provides the procedure.

Initially, the complaint alleged that there were procedural problems in how 1097 was passed. But as I stated, upon discovery it's very

apparent that 1035c may be violating the Plaintiff's substantive due process rights. And we would like to amend the Complaint to include two counts. And one would be that substitute ordinance 1035c is unconstitutional on its face because it fails to advance a real and substantial government interest.

And the second count that we would like to add is that ordinance 1035c is purely arbitrary, capricious and unfounded exclusion of other types of legitimate land use as applied to Plaintiff's property. And we believe these are very substantial issue and that in the interest of justice the Complaint or the request for declaratory relief ought to be allowed to be amended, Your Honor.

THE COURT: Thank you, ma'am. Mr. Yeardon?

MR YEADON: Your honor, Counsel correctly cites the rule that leave to amend should be freely granted. That is, of course, unless it is going to prejudice a party. And my only problem with an amendment at this stage, Your Honor, is discovery is to close at the end of this month. The scheduling order wasn't set up for this substantial of an amendment to the Complaint. So if the Court -- clearly we'd be prejudiced if the Court is going to keep its same scheduling order. If the Court is willing to modify its scheduling order and the trial dates --

THE COURT: Happy to do that.

MR YEADON: -- then I don't have an objection to the motion.

THE COURT: All right. Do you have any objection to modifying scheduling dates, Ms. Law?

MS. LAW: I have no objection, Your Honor.

THE COURT: Okay. All right. Then the Court will allow the amendment and the court will require that the parties do a new scheduling order to accomplish that. And Mr. Yeadon, my suggestion is, is that once you see the Amended Complaint and file your answer, then the two of you would then decide how much additional time both sides might need for discovery type questions. And if you can't resolve them, then schedule a short conference with me and I'll be happy to add some time.

MR. YEADON: Okay. Thank you, Your Honor.

THE COURT: Does that meet everybody's needs?

MR. YEADON: Your Honor, is there a time for filing the Amended Complaint?

THE COURT: I am assuming you have that ready to go don't you, Miss?

MS. LAW: I do, Your Honor. And in fact, we have some depositions that are scheduled for this Friday, and so I could provide Defendants with a copy of the Amended Complaint at that time.

THE COURT: All right. The Amended Complaint needs to be filed prior to the depositions Friday and a copy given to Mr. Yeadon at that time. Seem reasonable?

MR. YEADON: I have no objection with that, Your Honor.

THE COURT: Then you file your answer in the normal course of business under the court rule. Nice to see you all.

MR. YEADON: Thank You, Your Honor.

MS. LAW: Thank You, Your Honor.

(Whereupon, Motion concluded at 9:42 a.m.)

STATE OF MICHIGAN))ss
COUNTY OF INGHAM)

I, Paul G. Brandell, Certified Shorthand Reporter, do hereby certify that the foregoing Motion to Amend was taken before me at the time and place hereinbefore set forth.

I further certify that the foregoing is a full, true, and correct transcript of the statements taken on March 22, 2006.

12-28-06 /s/
Paul G. Brandell, CSR-4552
Certified Shorthand Reporter
Registered Professional
Reporter

MICHIGAN ZONING ENABLING ACT

Act 110 of 2006

AN ACT to codify the laws regarding local units of government regulating the development and use of land; to provide for the adoption of zoning ordinances; to provide for the establishment in counties, townships, cities, and villages of zoning districts; to prescribe the powers and duties of certain officials; to provide for the assessment and collection of fees; to authorize the issuance of bonds and notes; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

History: 2006, Act 110, Iff. July I, 2006.

The People of the State of Michigan enact:

ARTICLE I

GENERAL PROVISIONS

***** 125.3101. new *THIS NEW SECTION IS EFFECTIVE JULY I, 2006* *****

125.3101. new Short title.

Sec. 101. This act shall be known and may be cited as the "Michigan zoning enabling act".

History: 2006, Act 110, Eff July 1, 2006.

ARTICLE II

ZONING AUTHORIZATION AND INITIATION

***** 125.320 I.new *THIS NEW SECTION IS EFFECTIVE JULY I, 2006* *****

125.3201.new Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations.

Sec. 201. (1)A local unit of government may

provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.

(2) Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.

(3) A local unit of government may provide under the zoning ordinance for the regulation of land development and the establishment of districts which apply only to land areas and activities involved in a special program to achieve specific land management objectives and avert or solve specific land use problems, including the regulation of land development and the establishment of districts in areas subject to damage from flooding or beach erosion.

(4) A local unit of government may adopt land development regulations under the zoning ordinance designating or limiting the location, height, bulk, number of stories, uses, and size of dwellings, buildings, and structures that may be erected or altered, including tents and recreational

vehicles.

History: 2006. Act. _110, Eff. July 1, 2006.

**** 125.3202.new THIS NEW SECTION IS
EFFECTIVE JULY!, 2006 *****

125.3202.new Zoning ordinance; determination by local legislative body; amendments or supplements; notice of proposed rezoning.

Sec. 202. (1) The legislative body of a local government may provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined and enforced or amended, supplemented, or changed. Amendments or supplements to the zoning ordinance shall be made in the same manner as provided under this act for the enactment of the original ordinance.

(2) If an individual property or 10 or fewer adjacent properties are proposed for rezoning, the zoning commission shall give a notice of the proposed rezoning in the same manner as required under section 103.

(3) If 11 or more adjacent properties are proposed for rezoning, the zoning commission shall give a notice of the proposed rezoning in the same manner as required under section 103, except for the requirement of section 103(2) and except that no individual addresses of properties are required to be listed under section 103(3)(b).

(4) An amendment to a zoning ordinance by a city or village is subject to a protest petition under section 403.

(5) An amendment for the purpose of conforming a provision of the zoning ordinance to the decree of a court of competent jurisdiction as to any specific lands may be adopted by the legislative body and

the notice of the adopted amendment published without referring the amendment to any other board or agency provided for under this act.

History: 2006, Act 110, eff. July 1, 2006.

***** 125.3203.new THIS NEW SECTION IS
EFFECTIVE JULY 1, 2006 *****

125.3203.new Zoning ordinance; plan; incorporation of airport layout plan or airport approach plan; zoning ordinance adopted after March 28, 2001.

Sec. 203. (1) The zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare, to encourage the use of lands in accordance with their character and adaptability, to limit the improper use of land, to conserve natural resources and energy, to meet the needs of the state's residents for food, fiber, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to insure that uses of the land shall be situated in appropriate locations and relationships, to avoid the overcrowding of population, to provide adequate light and air, to lessen congestion on the public roads and streets, to reduce hazards to life and property, to facilitate adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, education; recreation, and other public requirements, and to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources, and properties. The zoning ordinance shall be made with reasonable consideration to the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and

appropriate trend and character of land, building, and population development.

(2) If a local unit of government adopts or revises a plan required under subsection (1) after an airport layout plan or airport approach plan has been filed with the local unit of government, the local unit of government shall incorporate the airport layout plan or airport approach plan into the plan adopted under subsection (1).

(3) In addition to the requirements of subsection (1), a zoning ordinance adopted after March 28, 2001 shall be adopted after reasonable consideration of both of the following:

(a) The environs of any airport within a district.

(b) Comments received at or before a public hearing under section 306 or transmitted under section 308 from the airport manager of any airport.

(4) If a zoning ordinance was adopted before March 28, 2001, the zoning ordinance is not required to be consistent with any airport zoning regulations, airport layout plan, or airport approach plan. A zoning ordinance amendment adopted or variance granted after March 28, 2001 shall not increase any inconsistency that may exist between the zoning ordinance or structures or uses and any airport zoning regulations, airport layout plan, or airport approach plan. This section does not limit the right to petition for submission of a zoning ordinance amendment to the electors under section 402 or the right to file a protest petition under section 403.

History: 2006, Act 110, Eff. July 1, 2006.

CITY OF EAST LANSING

SUBSTITUTE ORDINANCE NO. 10350

AN ORDINANCE TO AMEND ARTICLE VII. - OTHER DISTRICTS - OF CHAPTER 50 - ZONING - BY ADDING DIVISION 5 - RESIDENTIAL RENTAL RESTRICTION OVERLAY DISTRICTS - 'SECTIONS 50-772, 50-773, 50-774, 50-775, AND 50-776 TO THE CODE OF THE CITY OF EAST LANSING TO ESTABLISH AND PROVIDE PROCEDURES FOR THE ADOPTION OF RESIDENTIAL RENTAL RESTRICTION OVERLAY DISTRICTS.

THE CITY OF EAST LANSING ORDAINS:

Division 5 - Residential Rental Overlay Districts - and sections 50-772, 50-773, 50-774, 50-775 and 50-776 therein are hereby added to Article VII - Other Districts - of Chapter 50 - Zoning - of the code of the City of East Lansing to read as follows:

DIVISION 5: RESIDENTIAL RENTAL RESTRICTION OVERLAY DISTRICTS

Sec. 50-772. Residential rental restriction overlay districts R-0-1, R-0-2 and R-0-3.

Residential rental restriction overlay districts R-0-1, R-0-2 and R-0-3 are hereby established.

Sec. 50-773. Purpose and objectives.

The Residential Rental Restriction Overlay Districts R-0-1, R-0-2 and R-0-3 are zoning classifications which permit owners of property

within R-1, R-2 and RM-8 residential zoning districts to petition City Council to establish an overlay district, and district use regulations in their residential neighborhood, which would prohibit or restrict the rental uses of one-family dwellings within the neighborhood. These districts establish three levels of restrictions which operate to preserve the attractiveness, desirability, and privacy of residential neighborhoods by precluding all or certain types of rental properties and thereby preclude the deleterious effects rental properties can have on a neighborhood with regard to property deterioration, increased density, congestion, noise and traffic levels and reduction of property values. The goal of the overlay district is to allow owners of property within residential neighborhoods to control the types of rental properties, if any, that are permitted in one-family dwellings within their neighborhood.

It is also the purpose of the districts to achieve the following objectives:

- (1) To protect the privacy of residents and to minimize noise, congestion, and nuisance impacts by regulating the types of rental properties
- (2) To maintain an attractive community appearance and to provide a desirable living environment for residents by preserving the owner occupied character of the neighborhood
- (3) To prevent excessive traffic and parking problems in the neighborhoods.

Sec. 50-774. Uses permitted .

Uses permitted in the R-0-1, R-O-2, and R-0-3

residential rental restriction overlay district are as follows:

- (1) In the R-0-1. Residential Rental Restriction overlay district, permitted uses are all uses in the underlying zoning district except the use or occupancy of a one-family dwelling unit so as to require a rental housing license pursuant to Article 10 of Chapter 101 of the Code of the City of East Lansing.
- (2) In the R-0-2 Residential Rental Restriction overlay district, permitted uses are all uses in the underlying zoning district except the use or occupancy of a one-family dwelling unit so as to require a rental housing license pursuant to Article 10 of Chapter 101 of the Code of the City of East Lansing unless the use or occupancy is in accordance with a Class I rental license and the owner of the property owned it on the date the overlay district ordinance was approved by City Council.
- (3) In the R-0-3 Residential Rental Restriction overlay district, permitted uses--are all uses in the underlying zoning district except the use or occupancy of a one-family dwelling unit so as to require a rental housing license pursuant to Article 10 of Chapter 101 of the Code of the City of East Lansing unless the use or occupancy is in accordance with a Class I rental license.

Sec. 50-775. Procedures.

The following procedures must be complied with in order to establish a residential overlay district:

(1) A petition requesting an overlay district must be submitted to the City Clerk on forms provided by the City Clerk. The petition requirements are as follows:

a. The petition must identify the specific overlay district that is sought by specifying either an R-0-1, R-0-2 or R-0-3 overlay district.

b. Each petition must be circulated by a person who owns property within the proposed district and be signed by the circulator.

c. The petition must contain the signature and address of two thirds of the parcel owners within the proposed boundary of the overlay district, exclusive of public property. Jointly owned parcels will be considered owned by a single person for purpose of petitioning and any co-owner may sign a petition for such parcel. Only one owner of each parcel will count towards the two third requirement. If a person owns more than one parcel of property within the proposed district, they may sign the petition for each parcel they own.

d. Each person signing the petition must also enter, on the petition, adjacent to their signature, the date that the person signed the petition.

e. The petition must accurately advise the signer of what restrictions would be imposed on the property if the overlay district is established.

f. The proposed boundaries of the overlay district must be described in the petition and the boundaries must consist of streets or existing zoning district lines which totally enclose the proposed district.

g. There must be at least 50 separate lots or parcels within the proposed district as described in the petition or the proposed district must constitute a discrete neighborhood geographic area.

h. The proposed boundaries of the overlay district must be entirely within R-1, R-2, or RM-8 zoning districts and the parcels within the proposed district must be contiguous.

i. The proposed boundaries may not overlap a boundary of existing overlay districts or the boundary of an overlay district that is already the subject of an introduced ordinance pursuant to this section.

j. When submitted, no signature dated earlier than six months prior to the time the petition is filed with the City Clerk shall be counted in determining the validity of the petition.

(2) Upon presentation to the City Clerk for review, the Clerk shall verify the signatures on the petitions. If insufficient signatures are presented, the Clerk shall return the petitions to the person filing the petitions and identify the valid and invalid signatures. If sufficient valid signatures are presented, the Clerk shall refer the petitions to the Zoning Department which shall then, within 30 days, determine whether the petitions are in conformity with the remaining conditions of this section.

a. If the petition is determined to be in

conformity with the requirements of this section, the Zoning Administrator shall draft an appropriate ordinance and forward it to City Council for introduction in accordance with the petition procedures set forth in section 50-31. All procedures set forth in section 50-31 for zoning changes by petition shall thereafter be followed.

b. If the petition is not in conformity with the requirements of this section, the Zoning Administrator shall reject the petition and return it to the Clerk with a written explanation as to why the petition does not meet the requirements of this section. The Clerk shall then forward the petitions, and the explanation, to the person who filed the petitions.

c. If the petition is rejected for failure to comply with the boundary requirements, it may be resubmitted with the proper boundary lines if it is accompanied by certification that a copy of the petition and written notice was mailed to each property affected by the change, notifying them that their property was either added to or deleted from the petition and if by the correction of the boundary line the petition still meets all other requirements of the code.

d. If the petition is rejected for an insufficient number of valid signatures, it may be resubmitted with the additional signatures necessary to have it comply as long as the other signatures remain valid.

e. If an ordinance is forwarded to City Council pursuant to this section, after consideration of the petition and the

recommendations of the Zoning administrator, if any, the City Council may make additions or changes in the boundaries of the proposed overlay district to prevent spot zoning, to include or exclude areas that logically should have been included or excluded in the petition, to make the boundaries of the proposed overlay district abut boundary lines of other zoning districts and overlay districts, and to adopt an alternate ordinance in conformity with the suggested changes whether or not the two thirds majority requirement of property owners would still be met with the proposed changes.

f. If the City Council, in adopting an ordinance for an overlay district, applies the ordinance to fewer parcels of property than the petition sought, the owners of at least two thirds of the parcels remaining in the overlay district must have signed the original petition.

Sec. 54-776 Effect of overlay district ordinance .

- (1) Upon introduction of an ordinance to create an overlay district and at all times while the ordinance is pending final decision, there shall be a moratorium on the issuance of initial rental unit licenses to the extent that no initial rental housing license shall be issued within the proposed overlay district to the owner of a one family dwelling unit that would be precluded if the overlay district was adopted, regardless of whether the license was applied for prior to or subsequent to the ordinance's introduction.
- (2) Upon passage of an ordinance by City Council establishing an overlay district,

no initial rental unit license shall be issued to an owner of property in the overlay district inconsistent with the restrictions of the overlay district and it shall be unlawful to use or allow any property to be used except in conformity with the requirements of the underlying zoning district and overlay district. Any property in the overlay district that has an existing rental housing license, or has had a rental housing license within one year of adoption of the overlay district, shall be allowed to continue its use and occupancy in accordance with the law existing prior to the date of the adoption of the Overlay district. No existing rental housing use or occupancy in an overlay district shall be considered to be a nonconforming use as the result of adoption of an overlay district unless the rental license expires for more than 1 year. If an owner surrenders an existing license or allows, either intentionally or unintentionally, a license to remain expired for more than one year, any subsequent use of the property shall be subject to the restrictions imposed by the overlay district.

- (3) If an ordinance introduced pursuant to this section is denied, a subsequent ordinance for an overlay district that includes the same parcels may not be introduced for 1 year following introduction of the previous ordinance.
- (4) Any ordinance which is not adopted within 6 months of its introduction shall be deemed denied.

Mark S. Meadows
Mayor

Sharon A. Reid
City Clerk

CITY OF EAST LANSING, MICHIGAN

ORDINANCE NO. 1097

AN ORDINANCE TO AMEND THE ZONING USE
DISTRICT MAP OF
CHAPTER 50 - ZONING - OF THE CODE OF THE
CITY OF EAST LANSING.

THE CITY OF EAST LANSING ORDAINS:

The Zoning Use District Map is hereby amended to rezone a portion of the central part of the Bailey Neighborhood into the R-0-1 Residential Rental Restriction Overlay District. The area to be rezoned generally lies west of Gunson Street, north of Ann Street, east of Charles and Division Streets and south of Burcham Drive. The area also includes properties north of Burcham Drive along Dunbar Court, Camelot Drive, Alton Road and King Court. The rezoning includes the following properties:

<u>Street Address</u>	<u>Tax Parcel Number</u>
731 Alton Road	33-02-07-319-011
736 Alton Road	33-20-02-07-402-026
744 Alton Road	33-20-02-07-402-027
747 Alton Road	33-20-02-07-319-010.
755 Alton Road	33-20-02-07-319-009
765 Alton Road	33-20-02-07-319-007
773 Alton Road	33-20-02-07-319-008,
774 Alton Road	33-20-02-07-402-002
713 Ann Street	33-20-02-18-147-006
719 Ann Street	33-20-02-18-147-005
813 Ann Street	33-20-02-18-148-008

821 Ann Street	33-20-02-18-148-007
829 Ann Street	33-20-02-18-148-006
835 Ann Street	33-20-02-18-148-005
923 Ann Street	33-20-02-18-224-008
341 Bailey Street	33-20-02-18-143-008
351 Bailey Street	33-20-02-18-143-007
357 Bailey Street	33-20-02-18-143-006
361 Bailey Street	33-20-02-18-143-005
405 Bailey Street	33-20-02-18-132-013
411 Bailey Street	33-20-02-18-132-012
414 Bailey Street	33-20-02-18-133-011
417 Bailey Street	33-20-02-18-132-011
420 Bailey Street	33-20-02-18-133-012
423 Bailey Street	33-20-02-18-132-010
426 Bailey Street	33-20-02-18-133-013
429 Bailey Street	33-20-02-18-13 2-009
432 Bailey Street	33-20-02-18-133-014
435 Bailey Street	33-20-02-18-132-008
438 Bailey Street	33-20-02-18-133-001
439 Bailey Street	33-20-02-18-132-007
511 Bailey Street	33-20-02-18-119-011
516 Bailey Street	33-20-02-18-120-010
517 Bailey Street	33-20-02-18-119-010
522 Bailey Street	33-20-02-18-120-011
523 Bailey Street	33-20-02-18-119-009
528 Bailey Street	33-20-02718-120-012
534 Bailey Street	33-20-02-18-120-001
535 Bailey Street	33-20-02-18-119-008
541 Bailey Street	33-20-02-18-119-007
547 Bailey Street	33-20-02-18-119-006
610 Bailey Street	33-20-02-18-108-010
615 Bailey Street	33-20-02-18-107-007
620 Bailey Street	33-20-02-18-108-011
630 Bailey Street	33-20-02-18-108-012
635 Bailey Street	33-20-02-18-106-007
640 Bailey Street	33-20-02-18-108-001
641 Bailey Street	33-20-02-18-106-006
405 Beech Street	33-20-02-18-105-010
503 Beech Street	33-20-02-18-107-014
509 Beech Street	33-20-02-18-107-013
512 Beech Street	33-20-02-18-119-004
513 Beech Street	33-20-02-18407-012

519 Beech Street	33-20-0-18-107-011
527 Beech Street	33-20-02-18-107-010
528 Beech Street	33-20-02-18-119-005
533 Beech Street	33-20-02-18-107-009
551 Beech Street	33-20-02-18-107-008
609 Beech Street	33-20-02-18-108-009
621 Beech Street	33-20-02-18-108-008
622 Beech Street	33-20702-18-120-002
626 Beech Street	33-20-02-18-120-003
645 Beech Street	33-20-02-18-121-015
646 Beech Street	33-20-02-18-123-001
651 Beech Street	33-20-02-18-121-014
656 Beech Street	33-20-02-18-123-002
661 Beech Street	33-20-02-18-133-011
696 Beech Street	33-20-02-18-123-003
704 Beech Street	33-20-02-18-123-004
705 Beech Street	33-20-02-18-121-012
710 Beech Street	33-20-02-18-123-005
711 Beech Street	33-20-02-18-121-011
717 Beech Street	33-20-02-18-121-010
746 Beech Street	33-20-02-18-134-002
747 Beech Street	33-20-02-18-122-005
749 Beech Street	33-20-02-18-122-006
752 Beech Street	33-20-02-18-134-003
817 Beech Street	33-20-02-18-212-009
820 Beech Street	33-20-02-18-135-002
830 Beech Street	33-20-02-18-135-003
927 Beech Street	33-20-02-18-213-009
928 Beech Street	33-20-02-18-222-002
1006 Beech Street	33-20-61-18-223-001
1007 Beech Street	33-20-02-18-214-012
1013 Beech Street	33-20-02-18-214-011
1016 Beech Street	33-20-02-18-223-002
1023 Beech Street	33-202-18-214-010
1026 Beech Street	33-20-02-18-223-003
1033 Beech Street	33-20-02-18-214-009
1036 Beech Street	33-20-02-18-223-004
416 Burcham Drive	33-20-02-18-105-001
605 Burcham Drive	33-20-02-07-318-006
615 Burcham Drive	33-20-02-07-318-005
625 Burcham Drive	33-20-02-07-318-010

645 Burcham Drive	33-26-02-07-318-009
401 Butterfield Drive	33-20-02-18-133-010
403 Butterfield Drive	33-20-02-18-133-009
411 Butterfield Drive	33-20-02-18-133-008
417 Butterfield Drive	33-20-02-18-133-007
418 Butterfield Drive	33-20-02-18-134-013
422 Butterfield Drive	33-20-02-18-134-014
428 Butterfield Drive	33-20-02-18-134-015
430 Butterfield Drive	33-20-02-18-134-020
432 Butterfield Drive	33-20-02-18-134-021
433 Butterfield Drive	33-20-02-18-121-016
434 Butterfield Drive	33-20-02-18-134-018
439 Butterfield Drive	33-20-02-18-123-015
447 Butterfield Drive	33-20-02-18-123-009
453 Butterfield Drive	33-20-02-18-123-008
461 Butterfield Drive	33-20-02-18-123-007
464 Butterfield Drive	33-20-02-18-134-019
471 Butterfield Drive	33-20-02-18-123-006
474 Butterfield Drive	33-20-02-18-134-001
500 Butterfield Drive	33-20-02-18-122-004
510 Butterfield Drive	33-20-02-18-122-003
513 Butterfield Drive	33-20-02-18-121-009
520 Butterfield Drive	33-20-02-18-122-002
525 Butterfield Drive	33-20-02-18-121-008
530 Butterfield Drive	33-20-02-18-122-001
605 Butterfield Drive	33-20-02-18-110-008
606 Butterfield Drive	33-20-02-18-111-009
618 Butterfield Drive	33-20-02-18-111-010
619 Butterfield Drive	33-20-02-18-110-007
624 Butterfield Drive	33-20-02-18-111-013
625 Butterfield Drive	33-20-02-18-110-006
633 Butterfield Drive	33-20-02-18-110-005
634 Butterfield Drive	33-20-02-18-111-012
666 Butterfield Drive	33-20-02-18-200-001
608 Camelot Drive	33-20-02-07-317-001
614 Camelot Drive	33-20-02-07-317-002
622 Camelot Drive	33-20-02-07-317-003
630 Camelot Drive	33-20-02-07-317-004

603 Charles Street	33-20-02-07-104-007
605 Charles Street	33-20-02-18-104-006
611 Charles Street	33-20-02-18-104-005
613 Charles Street	33-20-02-18-104-004
614 Charles Street	33-20-02-18-105-011
616 Charles Street	33-20-02-18-105-012
617 Charles Street	33-20-02-18-104-003
618 Charles Street	33-20-02-18-105-013
619 Charles Street	33-20-02-18-104-002
621 Charles Street	33-20-02-18-104-008
626 Charles Street	33-20792-18-105-014
632 Charles Street	33-20-02-18-105-015
636 Charles Street	33-20-02-18-105-016
637 Charles Street	33-20-02-18-104-009
649 Charles Street	33-20-02-18-105-017
710 Chittenden Drive	33-20-02-18-147-009
714 Chittenden Drive	33-20-02-18-147-012
720 Chittenden Drive	33-20-02-18-147-011
721 Chittenden Drive	33-20-02-18-145-008
727 Chittenden Drive	33-20-02-18-145-007
730 Chittenden Drive	33-20-02-18-147-001
737 Chittenden Drive	33-20-02-18-145-006
816 Chittenden Drive	33-20-02-18-148-014
820 Chittenden Drive	33-20-02-18-148-015
824 Chittenden Drive	33-20-02-18-148-016
304 Collingwood Drive	33-20-02-18-147-007
310 Collingwood Drive	33-20-02-18-147-008
342 Collingwood Drive	33-20-02-18-145-009
346 Collingwood Drive	33-20-02-18-145-010
352 Collingwood Drive	33-20-02-18-145-011
406 Collingwood Drive	33-20-02-18-134-012
421 Collingwood Drive	33-20-02-18-133-006
427 Collingwood Drive	33-20-02-18-133-005
433 Collinwood Drive	33-20-02-18-133-004
439 Collingwood Drive	33-20-02-18-133-003
448 Collingwood Drive	33-20-02-18-123-012
500 Collingwood Drive	33-20-02-18-123-013

510 Collingwood Drive	33-20-02-18-123-014
517 Collingwood Drive	33-20-02-18-120-005
523 Collingwood Drive	33-20-02-18-120-004
544 Collingwood Drive	33-20-02-18-121-016
550 Collingwood Drive	33-20-02-18-121-017
555 Collingwood Drive	33-20-02-18-108-007
556 Collingwood Drive	33-20-02-18-121-001
557 Collingwood Drive	33-20-02-18-108-006
567 Collingwood Drive	33-20-02-18-108-005
629 Collingwood Drive	33-20-02-18-109-004
631 Collingwood Drive	33-20-02-18-109-005
639 Collingwood Drive	33-20-02-18-109-007
645 Collingwood Drive	33-20-02-18-109-008
700 Collingwood Drive	33-20-02-18-110-002
710 Collingwood Drive	33-20-02-18-110-003
711 Collingwood Drive	33-20-02-18-109-009
718 Collingwood Drive	33-20-02-18-110-004
723 Collingwood Drive	33-20-02-18-109-010
733 Collingwood Drive	33-20-02-18-109-012
758 Collingwood Drive	33-20-02-18-111-002
765 Collingwood Drive	33-20-02-18-200-002
775 Collingwood Drive	33-20-02-18-200-003
807 Collingwood Drive	33-20-02-18-200-004
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820 Collingwood Drive	33-20-02-18-201-003
821 Collingwood Drive	33-20-02-18-200-006
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550 Division & 506 Beech	33-20-02-18-119-001
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325 Division Street	33-20-02-18-142-007
331 Division Street	33-20-02-18-142-006
337 Division Street	33-20-02-18-142-005
340 Division Street	33-20-02-18-143-014
343 Division Street	33-20-02-18-142-004
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1025 Snyder Road	33-20-02-18-202-009
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1033 Snyder Road	33-20-02-18-202-008
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539 Division Street	33-20-02-18-118-003
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/s/

Mark S. Meadows, Mayor

/s/

Sharon A. Reid, City Clerk

DIVISION 4. MEDIUM DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT, R-2

Sec. 50-261. Purpose.

The purpose of the R-2 district is to establish and preserve quiet, single-family home neighborhoods, particularly in older subdivisions with smaller platted lots, as desired by large numbers of people, free from other uses, except those which are both compatible with and convenient to the residents of such a district.

(Code 1994, ch. 55, § 5.35)

Sec. 50-262. Permitted uses.

In the R-2 single-family residential districts no buildings or premises shall be used and no building shall be hereafter erected or altered unless otherwise specifically provided for in this chapter, except for the following uses:

(1) Permitted principal uses.

- a. Single-family dwellings.
- b. Clustered development plan, in accordance with the provisions of division 7 of this article.

(2) Permitted principal uses subject to an approved site plan as set forth in section 5036 of this chapter.

- a. Public schools.

b. Private or parochial schools.

c. Public parks.

(3) Permitted accessory uses.

a. Private garages, the capacity of which shall not exceed three automobiles.

b. Outdoor sheds and storage buildings.

c. Swimming pools, tennis courts, and other similar uses when not used for commercial purposes.

d. The keeping of not more than one roomer by an owner residing in a single-family dwelling, except that a person owning a single-family dwelling on the effective date of Ordinance No. 900 shall be permitted to keep two roomers while continuing to own and reside in the dwelling. The maximum occupancy shall not exceed three unrelated persons, including the owner, for an owner-occupied dwelling or two unrelated persons for a non-owner-occupied dwelling. For purposes of this subsection, persons comprising a "domestic unit" as defined under "Family" in section 50-6 shall be deemed related persons.

e. Class A home occupations.

(Code 1994, ch. 55, § 5.36; Ord. No. 949, 6-18-2002; Ord. No. 1061, 2-7-2006)

CITY OF EAST LANSING

ORDINANCE NO. 900

AN ORDINANCE TO AMEND
CHAPTER 55. ZONING OF TITLE V.
ZONING AND PLANNING, OF THE
CODE OF THE CITY OF EAST
LANSING BY AMENDING §5.21.
§5.32, AND §5.36 THEREOF.

THE CITY OF EAST LANSING ORDAINS:

Sections 5.21, 5.32, and 5.36 of Chapter 55
of the Code of the City of East Lansing are hereby
amended to read as follows:

5.21 PERMITTED USES. In the "RA" District no
buildings or premises shall be used and no building
shall hereafter be erected or altered unless
otherwise specifically provided for in this Chapter,
except for the following uses:

(1) Permitted principal uses.

(a) Single-family dwellings

(b) Nurseries and allied uses,
general farming, orchards,
greenhouses, and truck farming,
except that the raising of poultry,
pets, or livestock for strictly
commercial purposes or on a scale
that would be objectionable because
of noise or odor shall not be
permitted

(2) Permitted principal uses subject to an

approved Plan of Development as set forth in §5.147A of this Chapter.

- (a) Public schools
- (b) Private or parochial schools
- (c) Publicly owned parks and recreation areas
- (d) Privately owned golf courses

(3) Permitted accessory uses.

(a) Private garages, the capacity of which shall not exceed three (3) automobiles

(b) Outdoor sheds and storage buildings

(c) The keeping of not more than one (1)

roomer by an owner residing in a single-family dwelling, except that a person owning a single-family dwelling on the effective date of Ordinance No. 900 shall be permitted to keep two (2) roomers while continuing to own and reside in the dwelling. The maximum occupancy shall not exceed three (3) unrelated persons, including the owner, for an owner occupied dwelling or two (2) unrelated persons for a non-owner occupied dwelling. For purposes of this subsection, persons comprising a "domestic unit"

as defined by §5.5(19) shall be deemed related persons.

(d) The sale of items grown upon the premises

(e) Swimming pools, tennis courts, and other similar uses when used for noncommercial purposes Class "A" home occupations

5.32 PERMITTED USES. In the "R-1" Single-Family Residential Districts, no buildings or premises shall be used and no building shall be hereafter erected or altered, unless otherwise specifically provided for in this Chapter, except for the following uses:

(1) Permitted principal uses.

(a) Single-family dwellings

(2) Permitted principal uses subject to an approved Plan of Development as set forth in §5.147A of this Chapter.

(a) Public schools

(b) Private or parochial schools

(c) Public parks

(3) Permitted accessory uses.

(a) Private garages, the capacity of which shall not exceed three (3) automobiles

(b) Outdoor sheds and storage buildings

- (c) Swimming pools, tennis courts, and other similar uses when not used for commercial purposes
- (d) The keeping of not more than one (1) roomer by an owner residing in a single-family dwelling, except that a person owning a single-family dwelling on the effective date of Ordinance No. 900 shall be permitted to keep two (2) roomers while continuing to own and reside in the dwelling. The maximum occupancy shall not exceed three (3) unrelated persons, including the owner, for an owner occupied dwelling or two (2) unrelated persons for a non-owner occupied dwelling. For purposes of this subsection, persons comprising a "domestic unit" as defined by §5.5(19) shall be deemed related persons.
- (e) Class "A" home occupations

5.36 PERMITTED USES. In the "R-2" Single-Family Residential Districts no buildings or premises shall be used and no building shall be hereafter erected or altered unless otherwise specifically provided for in this Chapter, except for the following uses:

- (1) Permitted principal uses.
 - (a) Single-family dwellings
 - (2) Permitted principal uses subject to an approved Plan of Development as set forth in §5.147A of this Chapter.

- (a) Public schools
- (b) Private or parochial schools
- (c) Public parks

(3) Permitted accessory uses.

- (a) Private garages, the capacity of which shall not exceed three (3) automobiles
- (b) Outdoor sheds and storage buildings
- (c) Swimming pools, tennis courts, and other similar uses when not used for commercial purposes
- (d) The keeping of not more than one (1) roomer by an owner residing in a single-family dwelling, except that a person owning a single-family dwelling on the effective date of Ordinance No. 900 shall be permitted to keep two (2) roomers while continuing to own and reside in the dwelling. The maximum occupancy shall not exceed three (3) unrelated persons, including the owner, for an owner occupied dwelling or two (2) unrelated persons for a non-owner occupied dwelling. For purposes of this subsection, persons comprising a "domestic unit" as defined by §5.5(19) shall be deemed related persons.
- (e) Class "A" home occupations

RESOLUTION TO ADOPT THE BIG
PICTURE COMPREHENSIVE PLAN
FOR OUR FUTURE

WHEREAS, the East Lansing Planning Commission is the duly appointed municipal planning commission for the City of East Lansing under the Michigan Municipal Planning Act, P.A. 285 of 1931, as amended, and Chapter 2, Division 5 of the East Lansing City Code; and

WHEREAS, the Minicipal Planning Act and Chapter 2, Division 5 of the City Code authorizes the Planning Commission to make and adopt a master plan for the physical development of the City and to amend, extend and add to the plan; and

WHEREAS, the Planning Commission has engaged in a public process to develop a new Comprehensive Plan to replace the 1981 Comprehensive Plan and many subsequent amendments thereto; and

WHEREAS, the Comprehensive Plan Team consisted of representatives of the East Lansing Planning Commission, City Council, Parks and Recreation Commission, Downtown Development Authority, Transportation Commission, Zoning Board of Appeals, the East Lansing Public School Bard, the Office of Government Affairs of Michigan State University, and a number of East Lansing residents; and

WHEREAS, the Comprehensive Plan Team, with the assistance of City staff, the Michigan State University Urban and Regional Planning Program and local residents, has undertaken a thorough

review and analysis of present conditions and trends and future challenges and opportunities within the City; and

WHEREAS, the public has provided input on the development of the Plan through an outline comment form, e-mails, phone calls and letters as well as forums hosted by the Comprehensive Plan Team in January 2002, March 2002, and April 2005; and

WHEREAS, the Comprehensive Plan Team presented and recommended draft *Big Picture Plan for our Future* to the Planning Commission in December 2005; and

WHEREAS, the Planning Commission held a duly announced and advertised public hearing on September 27, 2006 on the recommended draft *Big Picture Plan for our Future* and received additional input from other City boards and commissions, neighboring municipalities and the general public; and

WHEREAS, the Planning Commission has considered the recommended *Big Picture Plan for our Future* and the input received at several subsequent public meetings; and

WHEREAS, on October 25, 2006, the Planning Commission reviewed the proposed Plan, which consists of four sections, including East Lansing City Profile, City Scenes: The Current Scene, Future Scenes: Focus on City-wide Goals, the Aerial View: Proposed Land Use Map; and

WHEREAS, the Planning Commission has determined that the proposed Plan with the accompanying map accurately reflects the Planning Commission's recommendations for the development of the City.

THEREFORE, BE IT RESOLVED that the East Lansing Planning Commission adopts the *Big Picture Plan for our Future*, as amended through October 25, 2006, as the *Comprehensive Plan* for the City of East Lansing, to replace the previous Comprehensive Plan and amendments thereto, with the exception of the East Village Master Plan adopted February 8, 2006; and

BE IT FURTHER RESOLVED that the Planning Commission directs staff to certify attested copies of the *Big Picture Plan for our Future* to the City Council and the Ingham County Register of Deeds; and

BE IT FURTHER RESOLVED that the Planning Commission directs staff to transmit copies of the *Big Picture Plan for our Future* to each neighboring Municipality, the regional planning commission, the county board of commissioners and each public utility and railroad owning property or operating in the City, and to make copies available for public inspection at the East Lansing City Hall, the East Lansing Library and on the City's web site.

Adopted by the East Lansing Planning Commission on: October 25, 2006

Yeas: 6

Nays: 0

Absent: 2 with one vacancy

/s/

Roberta McElmurry, Chairperson

/s/

Robert A. Owen, Jr., AICP, Secretary

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(3)

No. 08-1114

FILED
APR 2 - 1993
OFFICE OF THE CLERK
SUPREME COURT U.S.

**In The
Supreme Court of the United States**

AGRIS PAVLOVSKIS,

Petitioner,

v.

CITY OF EAST LANSING,

Respondent.

**On Petition For Writ Of Certiorari
To The Court Of Appeals Of Michigan**

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

THOMAS M. HITCH (P25558)
MCGINTY, HITCH, HOUSEFIELD,
PERSON, YEADON &
ANDERSON, P.C.
Attorney for Respondent
601 Abbot Road
East Lansing, MI 48823
(517) 351-0280

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STATEMENT OF CASE

Petitioner is seeking review by this Court of an unpublished decision of the Michigan Court of Appeals which upheld two local ordinances of the City of East Lansing that together allowed neighborhoods to petition the City Council to impose restrictions on their own rights to rent their property.

Ordinance 1035C allows neighbors in certain residentially-zoned districts to petition the City Council for a zoning ordinance which would either prohibit an owner from obtaining a rental housing license or restrict rental licensing to owner-occupied rental property. Ordinance 1035C establishes a number of procedures that the property owners must go through defining the area and petitioning for the restriction, including the requirement that they obtain signatures of two-thirds of the property owners within the proposed district. A petition to remove the particular zoning designation would require only a majority of the property owners (Section 50-31, Appendix A).

Ordinance 1097 is the ordinance which established the rental restriction district that included Petitioner's property. The petition and the ordinance were for the most restrictive district of those available under the ordinance which, in this case, prohibits owners from obtaining any rental housing license.

Generally, the City requires a rental housing license if someone other than the owner's family is going to reside on the premises. There are, of course,

a number of exceptions to the requirement for obtaining a rental housing license that are delineated in the City's rental licensing ordinance (Section 1001.2 – Appendix B). “Family” is broadly defined to include non-traditional families referred to as “domestic units.” (Appendix C).

Petitioner raised federal questions in the lower court only in the most general of terms and only in the “wherefore” clause of Counts I and II of the Amended Complaint. Likewise, other than to mention the existence of the Fourteenth Amendment in their brief on appeal to the Michigan Court of Appeals, Petitioner provided no analysis of the U.S. Constitution nor did he cite any authority analyzing the U.S. Constitution. Not surprisingly, the Michigan Court of Appeals’ decision does not treat this as a question of federal law and cites no federal law or federal authority in its opinion either.

REASONS FOR DENYING THE WRIT

I. WHETHER THE ORDINANCE VIOLATES THE MICHIGAN ZONING ENABLING ACT IS NOT A FEDERAL QUESTION.

Petitioner’s first argument fails to identify a federal question for which this Court would have jurisdiction. Rather, Petitioner asserts that the East Lansing zoning ordinance violates the state’s Zoning Enabling Act. There is no attempt to claim that this

would somehow be a federal question within the jurisdiction of this Court.

Even if this issue could somehow be deemed a federal question, this specific question was neither presented to nor decided by the Court of Appeals (Petitioner's Appendix, p 10-15). Nor was it raised by Petitioner in his application for leave to appeal from the decision of the Court of Appeals. Rather, this issue was presented to the Michigan Supreme Court in an amicus brief filed in support of Petitioner's application for leave to appeal.

Even if one were to look past all of the procedural irregularities in presenting this issue to this Court, the issue lacks merit. Petitioner inaccurately classifies the zoning restriction as a regulation of ownership as opposed to a regulation of a use. Rental housing in a college community is big business given the number of transient students. East Lansing has been dealing with the conflicts between this particular use and owner-occupied residential dwellings for many, many years. Zoning, by its very nature, is the authority of government to separate conflicting uses. Petitioner himself acknowledged the conflicting nature of rental properties and owner-occupied properties in East Lansing during his deposition and had no issues with the goals behind the City drawing lines to separate the two. (Petitioner's Transcript, Appendix D, p 26-28). He only felt that his property should not be included within the line drawn by the residents who petitioned City Council for the

particular ordinance that affected his property. (Appendix D, p 35).

II. THERE IS NO MERIT TO PETITIONER'S CLAIM THAT THE ORDINANCE IS NOT RELATED TO A LEGITIMATE GOVERNMENTAL INTEREST.

Petitioner's claim that East Lansing's zoning restriction violates Petitioner's substantive due process rights is without merit. As recognized in *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926), in considering a substantive due process challenge to a zoning ordinance, the court does not look to the abstract but considers it in connection with the circumstances and the locality. If the validity of the legislative classification for zoning purposes is debatable, the legislative judgment must be allowed to control. *Id.* at 388.

The City of East Lansing has been a college community since Michigan State University was first established as Michigan Agricultural College in 1855. Over the years, however, as a result of changing markets and economic demands, the City has seen many of its single family homes converted to rental properties in the nature of miniature apartment buildings to accommodate the increased demand for rental housing. Watching the conversion of its housing stock to rental housing, the City saw the deterioration and deleterious effects the "creep" of rental

housing had into the areas formerly owner-occupied. It heard its residents complain that their ability to peacefully enjoy their own property, as well as their property values, were being diminished because of the conversion of their neighbors' single family homes to rental properties. Most often, the homes were being occupied by transient college students whose clash of lifestyles with owner-occupied homes became a constant source of conflict.

Efforts to address the issue through density restrictions in accordance with those approved in *Village of Belle Terre v. Borras*, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974), have helped but have not been completely successful. Likewise, enforcement of noise regulations and property maintenance regulations is helpful but insufficient to alleviate the ever-expanding problem and conflict.

Petitioner, as he did in the state courts, appears to acknowledge that the ordinance's goals are legitimate. Petitioner then appears, however, to make an overbreadth challenge, arguing that the ordinance not only prohibits the intrusion of the clashing lifestyles but also those that may not otherwise conflict. As recognized in *Euclid*, however, zoning ordinances that exclude in general terms all establishments may not only exclude the offensive or dangerous, but may also exclude those that are neither offensive or dangerous.

The inclusion of a reasonable margin, to insure effective enforcement, will not put

upon a law, otherwise valid, the stamp of invalidity. Such laws may also find their justification in the fact that in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation.

Euclid, supra, at 388-389.

Petitioner also cites a Connecticut Supreme Court case for the proposition that removing the right to rent is a significant restriction on the right of ownership, but acknowledges that was not a decision based on constitutional footing. Respondent agrees that restricting a right to rent is a significant restriction on the right of ownership, however, disagrees that it causes economic disadvantage and there is nothing in the record to support such a claim. The ordinance is designed so that persons petitioning Council for such a restriction can do so only upon asking Council to restrict their own right to rent their property as well. As such, the protections and the economic benefit afforded by the restriction are self-evident. People simply would not seek to strip themselves of the right to rent their property were it not economically beneficial. This is the likely reason Petitioner made no "takings" claim in the state courts.

III. EVEN IF A BENEFIT-BURDEN BALANCING TEST WAS APPLICABLE TO A DUE PROCESS ANALYSIS, THE BENEFITS OF THE ORDINANCE OUTWEIGH ANY BURDEN.

There appears to be little distinction between Petitioner's second and third arguments except in Argument III, Petitioner seeks to interject a benefit-burden balancing test into his due process analysis by citing the overturned district court decision of *Norton Theater, Inc. v. Gibbs*, 373 F. Supp. 363 (ED Mich. 1974). See *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976). Even if the *Norton Theater* decision had not been overturned, the benefit-burden analysis employed by the District Court in that case would have little applicability here since the standard was employed in an Equal Protection analysis of a classification restraining First Amendment rights in which the court applied a "test of close scrutiny." It was not used in a substantive due process analysis in that case or in any other due process claim Respondent is aware of.

Even if such an analysis was applicable to Petitioner's due process claim, the benefit to the property owners and society versus the burden imposed is, again, self-evident through the fact that two-thirds of the property owners petitioned to have the restriction imposed upon themselves. If the benefit were outweighed by the burden, people simply would not petition the Council to impose such a restriction upon themselves.

IV. A REQUIREMENT OF A TWO-THIRDS MAJORITY TO PETITION COUNCIL FOR AN ORDINANCE ESTABLISHING AN OVERLAY DISTRICT DOES NOT MEAN THAT ONE SET OF OWNERS DETERMINES THE EXTENT AND KIND OF USE WHICH ANOTHER SET OF OWNERS MAY MAKE OF THEIR PRIVATE PROPERTY.

Finally, Petitioner attempts to have this Court review the ordinance by misstating the nature of the ordinance and the similarity and applicability of the ruling in *State of Washington v. Roberge*, 278 U.S. 116, 49 S. Ct. 50, 73 L. Ed. 210 (1928). In *State of Washington v. Roberge*, this Court struck down an ordinance which required the consent of two-thirds of the property owners within 400 feet of any proposed philanthropic home for children or for old people before a permit could be issued. The court found that the land owners, not being bound by any duty, would be free to withhold consent for selfish or arbitrary reasons subjecting the landowner to their will or caprice and that a delegation of power in that regard was repugnant to the due process clause of the Fourteenth Amendment.

In this instance, there is no delegation of authority to the property owners – only a requirement that any petition to establish such an ordinance contain the signatures of two-thirds of the property owners so that the Council is assured that if it does pass an ordinance restricting the property rights, at a minimum there is a two-thirds “super majority” of the

property owners in agreement with the resolution. There is no obligation on the part of the City Council to adopt such an ordinance and it proceeds through the public hearing process in the same manner as any other zoning ordinance. As such, the argument that Petitioner is subjected to the "will and caprice of the adjoining property owners" is a misstatement of fact. There is no delegation of power – only a bar to a lesser majority's ability to petition for such an ordinance. Contrary to Petitioner's claim, one set of owners does not make a determination as to the use which another set of owners may make of their private property.

CONCLUSION

Petitioner is seeking review by this Court of an unpublished decision of the Michigan Court of Appeals. The Petitioner's main argument that the ordinance violates the Michigan Zoning Enabling Act is not a federal question within the jurisdiction of this Court. There is no merit to Petitioner's claim that the ordinance is not related to a legitimate governmental interest and Petitioner has set forth the wrong standards for analyzing due process claims by misquoting overturned District Court decisions. Finally, Petitioner misstates the nature of the ordinance as an improper delegation of authority where there is no delegation of power, but rather a bar to a lesser majority's ability to petition for an overlay district

restricting rental rights. For the foregoing reasons,
the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

THOMAS M. HITCH (P25558)
MCGINTY, HITCH, HOUSEFIELD,
PERSON, YEADON &
ANDERSON, P.C.

Attorney for Respondent
601 Abbot Road
East Lansing, MI 48823
(517) 351-0280

Dated: April 2, 2009

APPENDIX A

EAST LANSING CODE

**ARTICLE II. ADMINISTRATION
AND ENFORCEMENT***

DIVISION 1. GENERALLY

Sec. 50-31. Changes and amendments.

(a) The city council may of its own motion, or shall upon petition signed by the owners of a majority of the property proposed for rezoning, prepare an ordinance amending or changing the district boundaries or the regulations herein established. The ordinance shall, upon introduction thereof, be referred to the planning commission for review and recommendation. Prior to submitting its recommendation to the city council, the commission shall hold a public hearing, following notice thereof as required by section 202 of the Michigan Zoning Enabling Act, MCL 125.3202. For applications that require the submission and review of a traffic impact study under division 4 of this article, the required study shall be submitted with the application and forwarded to the city engineer for review. The study and the city engineer's report shall be submitted to the transportation commission for review. Final action on the application shall not be taken by the planning commission until the transportation commission has had the opportunity to review and comment on the

* **Cross reference** – Administration, ch. 2.

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application at a regular meeting. The city council shall, on receipt of the report of the planning commission, set a date for a public hearing for consideration of such proposed amendment, supplement or change. After public hearing upon such proposed amendment, supplement or change, following notice thereof as required by section 202 of the Michigan Zoning Enabling Act, MCL 125.3202, the city council may act upon the adoption thereof, with or without amendment. Whenever a written protest against such proposed amendment, supplement or change, signed by the owners of 20 percent or more of the area of land proposed to be altered or by the owners of 20 percent of the area of land within 100 feet of any part of the boundary of the land proposed to be altered, excluding any publicly-owned land from either calculation, shall have been filed with the city council, the ordinance providing for such proposed amendment, supplement, or change shall not be passed except by a two-thirds vote of all members of the city council.

(b) Following adoption of an ordinance to amend, supplement or change the district boundaries or the regulations herein established, the ordinance shall be filed with the city clerk and a notice of the ordinance adoption shall be published and mailed in accordance with the requirements of section 401 of the Michigan Zoning Enabling Act, MCL 125.3401. The ordinance shall take effect upon the expiration of seven days after its publication, unless a later effective date is specified by the city council, or unless a notice of intent to file a petition seeking to submit the

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ordinance to the electors of the city for action is filed with the city clerk in accordance with the provisions of section 402 of the Michigan Zoning Enabling Act, MCL 125.3402.

(Code 1994, ch. 55, § 5.141; Ord. No. 1157, 11-8-2006; Ord. No. 1162, 4-17-2007)

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APPENDIX B
EAST LANSING CODE

Sec. 6-175

1001.2 Exceptions. A rental unit license is not required under the following circumstances:

- (1) Family occupancy. Any member of a family, as defined by chapter 50 of the City Code, including nieces and nephews, may occupy a dwelling as long as any other member of that family is the owner of that dwelling.
- (2) House-sitting. During the temporary absence of the owner and owner's family of a domicile for a period not to exceed two years in any five-year period, the owner may permit up to two unrelated individuals or a family to occupy the premises without a rental license by notifying the code enforcement department, on a form provided by the department, of the address of the owner's temporary domicile, the projected duration of the owner's absence, and the identity of the unrelated individual or family who will occupy the premises during the owner's absence,
- (3) One- and two-family dwelling sales. The sale of any one- or two-family dwelling intended for occupancy by the owner or owners of record which are to be occupied by the seller under a rental agreement for a period of less than 90 days following closing. The sale of any one- or two-family dwelling intended for occupancy under a lease with option to purchase agreement, life estate agreement or any other form of conditional sale agreement, shall require a rental unit license if

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legal or equitable ownership is not transferred in its entirety within 90 days of execution of the conditional sales agreement.

- (4) Exchange student, visiting clergy, medical caregiver, child care. For an owner-occupied dwelling, additional occupancy by exchange students placed through a recognized education exchange student program, one visiting clergy or clerical aide to a local church or congregation, or one person to provide child care or medically prescribed care.
 - (5) Estate representative. Occupancy by a personal representative, trustee, or guardian of the estate and their family where the dwelling was owner-occupied for the last year prior to the owner's death, and the occupancy does not exceed two years from the date of death of the owner by notifying the code enforcement department on a form provided by the department of the owner's name, date of death, and name of the person occupying the premises.
-

APPENDIX C
EAST LANSING CODE

Sec. 50-6

Family.

- (1) Family means one person, two unrelated persons; or where there are more than two persons residing in a dwelling unit, persons classified constituting a family shall be limited to husband, wife, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson, granddaughter, aunt, uncle, stepchildren, and legally adopted children, or any combination of the above persons living together in a single dwelling unit,
- (2) Anyone seeking the rights and privileges afforded a member of a family by this Code shall have the burden of proof by clear and convincing evidence of their family relationship.
- (3) Domestic unit: As herein defined, a domestic unit shall be given the same rights and privileges and shall have the same duties and responsibilities as a family, as defined herein for purposes of construing and interpreting this chapter. Domestic unit shall mean a collective number of individuals living together in one dwelling unit whose relationship is of a regular and permanent nature and having a distinct domestic character or a demonstrable and recognizable bond where each party is responsible for the basic material needs of the other and all are living and cooking as a single housekeeping unit.

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- (4) This definition shall not include any society, club, fraternity, sorority, association, lodge, combine, federation, group, coterie, or organization, nor include a group of individuals whose association is temporary or seasonal in character or nature or for the limited duration of their education, nor a group whose sharing of a house is not to function as a family, but merely for convenience and economics,
- (5) Any person seeking the rights and privileges afforded a member of a domestic unit by this chapter shall have the burden of proof by clear and convincing evidence of each of the elements of a domestic unit.
- (6) Nothing in this section shall be deemed to confer any legal rights upon any person on the basis of conduct otherwise unlawful under any existing law.

* * *

APPENDIX D

**STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF INGHAM**

AGRIS PAVLOVSKIS, /

Plaintiff,

-vs-

CITY OF EAST LANSING
and SHARON A. REID,
City Clerk,

Defendants. /

FILE NO.: 05-523-NZ
HON. BEVERLY
NETTLES-NICKERSON

DEPOSITION

of AGRIS PAVLOVSKIS, a witness called by the Defendants, taken before Trisha A. McElrath, CSR-0946, Notary Public, at the Law Offices of McGinty, Hitch, et al, 601 Abbott Road, East Lansing, Michigan, on the 24th day of July, 2006, noticed for the hour of 9:30 a.m.

APPEARANCES:

CYNTHIA LAW, P.C.
534 S. Capitol Avenue
P.O. Box 12082
Lansing, Michigan 48901
By: CYNTHIA LAW, (P52833)

On behalf of the Plaintiff.

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McGINTY, HITCH, HOUSEFIELD, PERSON,
YEADON & ANDERSON, P.C.

601 Abbott

East Lansing, Michigan 48823

By: THOMAS M. YEADON (P38237)

On behalf of the Defendant.

METROPOLITAN REPORTING, INC.
(517) 886-4068

* * *

[26] BY MR. YEADON:

Q. With regard to those purposes that are set forth in the ordinance itself, do you have any disagreements with the purposes, do you think that those are legitimate purposes for an ordinance, if in fact the ordinance accomplishes what those say it is designed to do?

A. I think these are reasonable goals set by a community. So I, in principle, I do not object to them, but I believe that there are ordinances already in place other than 1035C that already achieve those goals.

* * *

Q. Now, you've lived in a close to a rental student rental population since 1988, correct?

A. Um-hum, correct.

Q. And you said that there's - it's not necessarily conducive to a family atmosphere because of the flow of people and that type of thing, correct?

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A. Yes.

Q. And that's also true with the hours that the students generally keep different hours than us normal working [27] people, correct?

A. Correct.

Q. Okay. And sometimes, especially summer time, or when it's warmer out and people are just walking by and they create noise just by virtue of their own shutting doors, car doors, and talking, and just being awake at those hours, correct?

A. Yes. There are more active times of the year for students.

Q. But, also, people can disturb a neighborhood without necessarily violating one of the ordinances, would you agree with that?

A. I don't understand what you're asking.

Q. For instance, when it's 4 o'clock in the morning and you've got a group of people coming home and slamming their car doors as they get out of their car, it's not necessarily a violation of a law, but it creates noise that can disturb a neighborhood, correct?

A. Yes.

Q. And even just at those hours of the morning, even just normal voices that would go unnoticed during the day can sound loud and disturbing, correct?

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A. Yes.

Q. So there are – would you agree that there are certain life style differences between the student [28] population and the residential population that kind of clash?

A. Yes.

* * *

[35] BY MR. YEADON:

Q. If I understand your objection, then, you would have been comfortable with the overlay district ordinance if it had not included the houses facing Ann Street?

A. Yes. Once I saw the plan, it did not make much sense to me that the plan – I had though perhaps a study had been done prior to that, but during the Freedom of Information Act, I learned that nothing had been other than the good wishes of petitioners. So, yes, I would thought it would make more economic sense to exclude houses facing that street.

Q. Okay. And with that modification, you wouldn't have any problems with the overlay Petition?

A. That's correct. At that time that was my chief concern was the affect of my property.

* * *
